UNITED
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Security Council

Distr.
GENERAL

S/1998/27
13 January 1998

ORIGINAL: ENGLISH

LETTER DATED 12 JANUARY 1998 FROM THE EXECUTIVE CHAIRMAN OF THE SPECIAL COMMISSION ESTABLISHED BY THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 9 (b) (i) OF SECURITY COUNCIL RESOLUTION 687 (1991) ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

The purpose of the present letter is to advise you, and through you the members of the Security Council, of a decision by the Government of Iraq that has been conveyed to me today, 12 January 1998. A copy of Ambassador Hamdoon's letter of 12 January 1998 to me and its attachment, a statement by an Iraqi spokesman on 12 January 1998, is attached to this letter (see annex).

With respect to the matters addressed by the statement by the official Iraqi spokesman, the central facts are as follows:

The Chief Inspector of UNSCOM 227, Mr. Scott Ritter, arrived in Iraq on 11 January, accompanied by 15 visiting inspectors. It is intended that he conduct inspections until 16 January. The overall team he leads draws upon staff resident in Baghdad and other visiting inspectors in addition to those who arrived with him, depending upon the nature of the site. During today's inspections, the overall team consisted of 44 persons drawn from 17 nations.

On the evening of 11 January, following customary practice, Mr. Ritter called at the National Monitoring Directorate in Baghdad to discuss arrangements for the forthcoming inspections. He made clear that the inspection teams would be composed on the basis described above. It was reported to me that those discussions had been largely businesslike and that the Iraqi side had expressed no concerns about the proposed composition of inspection teams.

Beginning in the morning of 12 January, the whole team having been assembled, the inspectors proceeded to conduct inspections at seven sites. Iraq declared three of these sites "sensitive" and was not able to make a decision as to which of its own categories it would assign one of the sites.

Prior to the completion of the work of inspection on 12 January, the statement by an official Iraqi spokesman was issued.

Turning now to the conduct of inspections, under the inspection plan for the period from 12 to 16 January, the team to be deployed to any given site would be drawn up on the basis of the nature of the site, the objective of the inspection at the site, the expertise required for the successful conduct of an inspection and the expertise held by individual inspectors.

The claims made in the statement by an Iraqi official spokesman seem to fail to take into account the facts with respect to the composition of the overall team of inspectors.

On the basis of the repeated decisions by the Security Council to the effect that Iraq must "cooperate fully and immediately, and without conditions or restrictions with the Special Commission", and that it is not for Iraq to dictate the composition of the Commission, its headquarters staff or the Commission's inspection teams, I propose to instruct the Chief Inspector to seek to proceed with his business tomorrow, 13 January, and, if possible, until the planned programme of inspections is completed.

I am sending a copy of this letter to the Permanent Representative of Iraq to the United Nations with the request that he transmit it, urgently, to his Government.

I am ready to brief the Council on these matters, as required.

(Signed) Richard BUTLER

Annex

[Original: Arabic]

Letter dated 12 January 1998 from the Permanent Representative of Iraq to the United Nations addressed to the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9 (b) (i) of Security Council resolution 687 (1991)

I have the honour to transmit to you herewith a copy of the statement made by the official spokesman on 12 January 1998 concerning the decision of the Government of Iraq to halt the work of the inspection team led by Scott Ritter, an American (see appendix). The team will not be permitted to undertake any activities inside Iraq until such time as its composition is reviewed and made more balanced by the equal participation of the permanent members of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

Appendix

[Original: Arabic]

Statement made on 12 January 1998 by an official spokesman of the Government of Iraq

We announced yesterday that the inspection team which arrived that day in Iraq, led by the American, Scott Ritter, is a blatant indication of the lack of balance in the composition of the Special Commission and its working practices in Iraq. The aforementioned team has nine American and five British members, one Russian and one Australian.

Considering it a major issue, we have already raised the matter of the unbalanced composition of the Special Commission, and have affirmed that United States and British control of the Commission is the reason for the continuing sanctions against Iraq and failure to implement paragraph 22 of Security Council resolution 687 (1991). The Americans who control the Special Commission centre and its activities in Iraq falsify facts and fabricate lies. Their intention is to prolong matters and they submit fallacious reports to the Security Council as to the demands that have been satisfied pursuant to Council resolution 687 (1991).

We cannot accept the continuation of this situation. We were hopeful that, after the last crisis, some reasonable adjustment would have been made in the composition of the Special Commission and in its working practices in Iraq. However, those in control of Special Commission headquarters in New York are insistent on their previous position and their biased policy. Sending this team, composed as it is, is evidence of this insistence and of lack of respect for the requests made by other States, and in particular those which are permanent members of the Security Council, that they should play a greater role in the work of the Special Commission.

It has therefore been decided to halt the work of this team with effect from tomorrow. It will not be permitted to undertake any activity in Iraq until such time as its composition is reviewed and made more balanced by the equal participation of the permanent members of the Security Council.

UNITED NATIONS **S**

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S/1998/28
13 January 1998
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 13 JANUARY 1998 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government and with reference to the letter dated 12 January 1998 from Mr. Richard Butler, Executive Chairman of the Special Commission, addressed to you concerning the composition of the inspection team headed by the United States national Scott Ritter, I should like to provide the following clarifications:

1. In his letter dated 9 January 1998 addressed to Mr. Riyad al-Qaysi, Under-Secretary at the Ministry for Foreign Affairs, the Executive Chairman himself stated that the inspection team sent to Iraq was to be led by Ritter and would consist of 16 persons. In the letter he added to this 'and others as required from the Baghdad Monitoring and Verification Centre (BMVC)'. This is an expression that is used in all of the notifications sent to us when an inspection team is to come from New York.

2. It is normal for any inspection team coming to Iraq from New York to be assisted by persons working at the BMVC. However, their participation is mostly of a logistic nature (with them acting, for example, as drivers, equipment operators, personnel used to encircle a site to be inspected on the outside and to observe entries and departures, etc.) and, as is clear from its nature, such participation is not connected with the substance of the inspection itself. The participation of a number of such persons does not alter the true nature of the composition of a particular inspection team entrusted by the Executive Chairman with a specific mission or specific tasks. Those from the BMVC who are used do not perform any task of importance in the framework of an inspection, such as asking questions, evaluating inspection results, submitting reports or other major tasks.

3. The statement made in Butler's letter to the effect that the Iraqi side failed to specify the nature of the sites inspected by the team is untrue. In any event, the names of the sites indicate what they are and no special effort is required to assign them to a category. They were:

(a) The Tourism and Hotels Institute;

(b) The Ibn al-Quff Military Hospital;

(c) The Air Force Medical Centre;

(d) A General Security facilities complex;

(e) Abu Ghraib prison;

(f) An Intelligence Service (Mukhabarat) site;

(g) The Directorate of General Security headquarters.

4. The modalities for entry to sensitive sites were applied at the following locations: the General Security facilities complex; the Intelligence Service (Mukhabarat) site; and the Directorate of General Security headquarters. The following sites were inspected in the normal manner: the Tourism and Hotels Institute; Ibn al-Quff Military Hospital; the Air Force Medical Centre; and Abu Ghraib prison.

It should be noted that, for the inspection of all the sensitive sites we allowed entry to a larger number of inspectors than is the norm for such sites, which is four persons. Nine inspectors entered the General Security facilities complex and the Directorate of General Security headquarters, and six inspectors entered the Intelligence Service (Mukhabarat) site.

5. In visiting the sensitive sites in question, only four BMVC personnel participated together with the members of the team sent under the leadership of Scott Ritter. They were a Jordanian interpreter, an American and two Frenchmen, one of them from the International Atomic Energy Agency. This confirms that it was the original, unbalanced, team that carried out the actual inspection activities.

6. The statement made in the letter to the effect that the official Iraqi statement was issued prior to the completion of the work of inspection on 12 January is untrue. The inspections on that day were completed at 4.40 p.m., and the official Iraqi statement was issued at 6 p.m.

7. Iraq affirms that the composition of the team sent under the leadership of Scott Ritter lacked balance and was incompatible with the modalities for the composition of United Nations teams. Such conduct on the part of the Office of the Special Commission in New York is unacceptable.

One matter that must be mentioned and considered is that the reasons for inspecting these sensitive sites as related by Scott Ritter to his Iraqi escorts raise serious questions concerning the mission assigned to this unbalanced team. Chief Inspector Scott Ritter said that the reason for his inspection of the Tourism and Hotels Institute, the Ibn al-Quff Hospital and the Air Force Medical Centre, which are near or adjacent to the Special Commission's BMVC, was to ascertain the presence of any means of spying on the BMVC. Sophisticated equipment was used in these inspections, including a radar device for

underground detection and other miscellaneous sensors, and they found nothing to support these allegations.

The reason for their inspection of the General Security facilities complex and the Directorate of General Security headquarters was, as stated by Scott Ritter, to determine whether there were sections for telecommunications monitoring and to ascertain, as he claimed, that there was no espionage activity against the Special Commission.

With regard to the Directorate of General Security headquarters he mentioned another reason, saying that there were items of equipment of Polish origin that were imported in 1994 and 1995 in an undeclared manner for a pesticide plant that could be modified as a plant for the production of chemical agents. This accusation is, of course, groundless, and this fact could have been verified by the Polish authorities. The justification that he gave concerning the connection of General Security with this matter, namely that it had provided protection for the movement of the alleged plant from the Jordanian border to Baghdad, is a pretext that was fabricated in order to establish a connection to justify the inspection of a sensitive security service. In connection with the Intelligence Service (Mukhabarat) site, he claimed that in the summer of 1995, between June and August, a number of prisoners had been sent from this site to Abu Ghraib prison and from there to a secret location where tests of chemical and biological agents had been performed on them.

It is clear from these allegations and the rationale offered that the team's objective was to demonstrate the existence of alleged connections between the Iraqi security services and dubious activities. That the team was made up of Americans and British confirms this fact, since it is the United States and British authorities that are giving currency to false allegations with regard to certain activities with a view to misleading the Security Council and world public opinion concerning the true state of affairs in Iraq.

8. The main reason for Iraq's decision to halt the work of this team until such time as it is restructured in a balanced manner is not the nature of the sites that it inspected, since we allowed it to complete the work of inspection for 12 January. The reason is that its composition lacks balance and that this lack of balance has an essentially political significance. As long as the composition of the Special Commission and the composition of the inspection teams reporting to the Security Council remains thus, the embargo will remain in place and will continue to murder Iraqis in the service of the declared United States policy against Iraq.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

UNITED NATIONS **S**

Security Council

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GENERAL

S/1998/29
13 January 1998
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 8 JANUARY 1998 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to Security Council resolution 1145 (1997), of 19 December 1997, in which the Council decided to establish, with effect from 16 January 1998, a support group of 180 civilian police monitors, for a single period of up to nine months to continue to monitor the performance of the Croatian police in the Danube region of the Republic of Croatia.

Following the usual consultations, I should like to inform you that I intend to appoint Mr. Souren Saraydarian (Syrian Arab Republic) as my representative and head of the support group and the United Nations Liaison Office in Zagreb.

I should be grateful if you would bring the foregoing to the attention of the members of the Security Council.

(Signed) Kofi A. ANNAN

98-00681 (E) 130198 130198

UNITED
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Security Council

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S/1998/30
13 January 1998
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LETTER DATED 13 JANUARY 1998 FROM THE PRESIDENT OF THE SECURITY COUNCIL ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to inform you that your letter dated 8 January 1998 (S/1998/29), concerning the appointment of Mr. Souren Seraydarian (Syrian Arab Republic) as the representative of the Secretary-General and head of the support group and the United Nations Liaison Office in Zagreb has been brought to the attention of the members of the Security Council. They agree with the intention that you express therein.

(Signed) Alain DEJAMMET
President of the
Security Council

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UNITED
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General Assembly
Security Council

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A/52/766
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13 January 1998

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GENERAL ASSEMBLY
Fifty-second session
Agenda items 36, 37 and 87
QUESTION OF PALESTINE
THE SITUATION IN THE MIDDLE EAST
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES AFFECTING
THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE
AND OTHER ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Fifty-third year

Letter dated 13 January 1998 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

In follow-up to my letter of 24 December 1997 (A/52/754-S/1997/1011), I wish to refer to further, extremely dangerous statements made by Mr. Benjamin Netanyahu, Prime Minister of Israel. On 8 January 1998, the Prime Minister said "We cannot go back to a country that is 10 or 12 kilometres wide". In addition, he described the capture of the West Bank during the 1967 war as "the most important strategic development in the history of the Jewish State other than its inception".

These statements obviously sustain illegal claims by this Israeli Government to at least parts of the occupied territory since 1967. They are a reflection of expansionist intentions, which in fact destroy the crux of the current Middle East peace process and the mutual recognition between the Israeli and Palestinian sides. Once more, such statements add to the urgency of the needed action by the General Assembly to ensure that the participation of Israel in the work of the General Assembly is consistent with international legitimacy, including international law, provisions of the Charter of the United Nations and relevant United Nations resolutions.

On another front, on the same day, the Israeli Government approved the construction of 574 new units to be added to the illegal settlements in the occupied territory. Moreover, on 10 January 1998, plans were revealed by the Israeli Housing Ministry for the construction of more than 30,000 additional

units in the illegal settlements in the Occupied Palestinian Territory, including Jerusalem.

Such actions are very dangerous and they grossly violate international law as well as agreements reached between the parties. Measures by the international community to confront these Israeli statements, positions and actions are imperative in order for the Charter of the United Nations to be upheld and the Middle East peace process to be saved.

I should be grateful if you would arrange to have the text of the present letter distributed as a document of the General Assembly, under agenda items 36, 37 and 87 of the fifty-second session, and of the Security Council.

(Signed) Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/32
13 January 1998
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 11 JANUARY 1998 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 11 January 1998 from Mr. Mohamed Said Al-Sahaf, the Minister for Foreign Affairs of the Republic of Iraq, concerning the allocation of the sum of $50 million from the funds provided for under the memorandum of agreement to finance the costs of the pilgrimage this year.

I should be grateful if you would have the text of this letter and its annex distributed as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

ANNEX

Letter dated 11 January 1998 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General

As you know, the total embargo imposed on Iraq for more than seven years has had disastrous and inhuman consequences, which are incomprehensible.

In addition to the fact that the embargo has prevented Iraq from using its own resources and capacities to supply itself with food and medicine and meet its essential humanitarian needs, it has also deprived the Iraqi people of their right to carry out their religious obligations, in accordance with international humanitarian instruments, including the provisions of the Universal Declaration of Human Rights, in particular, article 18, which guarantees the freedom to manifest one's religion in observance.

Owing to the embargo, Iraqi Muslims have been deprived of the ability to carry out one of the principal obligations of the Muslim religion, namely, pilgrimage to the holy places of Islam because of the lack of the financial means needed to fulfil this obligation, which is cherished by Muslims throughout the world.

The obligation to perform the pilgrimage is a sacred duty for all Muslim men and women in accordance with the precepts of Islam. It is a question, therefore, of a humanitarian need just as, if not more than, the other needs.

In order to satisfy this basic need on the part of Iraqi Muslim citizens and in view of the fact that Security Council resolution 986 (1995) and the memorandum of agreement signed between Iraq and the United Nations Secretariat provides for the necessary means to meet the essential humanitarian needs of the Iraqi people by using part of their natural resources, the Iraqi Government, which desires to respond to this basic humanitarian need, requests the allocation of the sum of $50 million under the resources provided for in the memorandum of understanding to finance the pilgrimage of Iraqi Muslims to the holy places of Islam.

We are prepared to submit to you detailed proposals concerning the allocation of this sum to be drawn from Iraq's share of the funds coming from the export of its petroleum, in the hope that you will also be ready to hold consultations with us concerning the details of these proposals.

In the hope that you will respond favourably and speedily to this humanitarian request, I should like to convey to you the assurances of my highest consideration.

I should be grateful if you would have the text of this letter distributed as a document of the Security Council.

(Signed) Mohamed Said AL-SAHAF
Minister for Foreign Affairs
of the Republic of Iraq

UNITED NATIONS **A S**

General Assembly
Security Council

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A/52/767
S/1998/33
14 January 1998

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-second session
Agenda item 61
QUESTION OF CYPRUS

SECURITY COUNCIL
Fifty-third year

Letter dated 14 January 1998 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government and further to our letter dated 5 January 1998 (A/52/761-S/1998/12), I have the honour to draw your attention once more to yet another violation of the national airspace of the Republic of Cyprus and the flight information region of Nicosia committed by the Government of Turkey just two weeks after the last incident.

This new illegal and unacceptable Turkish action was committed on 12 January 1998 when four Turkish military aircraft, two type RF-4 with call sign ISIK-43 and two of unknown type (probably RF-4), violated the Nicosia flight information region and the national airspace of the Republic, flying over the areas of Karpasia, Mesaoria, Pendadaktylos and Dhekelia.

On behalf of the Government of the Republic of Cyprus, I wish to strongly protest once again the new violations of the sovereignty and territorial integrity of the Republic of Cyprus, which are in complete disregard of international law, the Charter of the United Nations and the relevant resolutions and decisions of the Organization on the question of Cyprus. I would request, therefore, that all necessary measures be taken to impress upon Turkey to cease and desist from such provocative actions which aggravate the situation in Cyprus.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda item 61, and of the Security Council.

(Signed) Sotirios ZACKHEOS
Ambassador
Permanent Representative

98-00803 (E) 140198 150198

UNITED NATIONS **S**

Security Council

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GENERAL

S/1998/34
14 January 1998

ORIGINAL: ENGLISH

LETTER DATED 14 JANUARY 1998 FROM THE PERMANENT REPRESENTATIVE OF SIERRA LEONE TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to forward a copy of a statement dated 13 January 1998 issued by the office of the President, Alhaji Ahmad Tejan Kabbah, on the implementation of the Conakry Peace Plan.

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) James O. C. JONAH
Ambassador
Permanent Representative

98-00810 (E) 140198

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Annex

Statement dated 13 January 1998 issued by the office of the President, Alhaji Ahmad Tejan Kabbah, on the implementation of the Conakry Peace Plan

It is almost three months since the Economic Community of West African States (ECOWAS) Committee of Five and the junta in Freetown signed the Conakry Peace Plan for the restoration of the constitutionally elected Government of President Kabbah by 22 April 1998. With only 13 weeks to that deadline, the illegal regime is now blaming ECOWAS and representatives of the United Nations, unjustifiably so, for the current impasse in the implementation of the Plan. This is a disturbing development.

Now, at this late hour, the junta has come up with some preposterous demands, some of which are new, while others are recycled from its repertoire of devious tactics aimed at sabotaging the Plan and continuing its illegal occupation of the seat of power. This is why it is relevant to ask: what right does the illegal regime have to dictate how ECOWAS should reorganize itself and suggest that it radically change its decision-making procedures? By what authority is the junta insisting on the composition of the ECOWAS monitoring group in Sierra Leone? How can the junta dictate what combatants should or should not be disarmed? It may be recalled that President Kabbah, in a statement in December 1997, had addressed this issue. And finally, who gave the illegal regime the power to unilaterally determine where the office of the United Nations Secretary-General's Special Envoy should be located and the number of nights he should spend in Freetown?

The illegal regime complains that it has been completely isolated by the ECOWAS Committee of Five, and by international agencies, in certain key areas of the implementation process, and that it was denied representation at the recent meeting of the Committee. The junta has failed to realize that it cannot demand, nor can it highjack international recognition or legitimacy.

The people of Sierra Leone have demonstrated unequivocally that the junta has no mandate to represent them or speak for them in any international meeting, or to participate in any such meeting where the welfare of the people of Sierra Leone is being addressed, except with the consent or acquiescence of the democratically elected Government of President Ahmad Tejan Kabbah. Indeed, the international community has reiterated that "the Government of President Ahmad Tejan Kabbah is the sole and legitimate Government of Sierra Leone". In particular, the Security Council has also acknowledged the legitimacy of the Government of President Kabbah. So the regime has absolutely no right to challenge or even to question the rights and privileges which regional and international organizations accord the President and his legitimate Government.

President Kabbah's Government has the sovereign authority to set up radio facilities on any location within the territory of Sierra Leone to broadcast objective news and information to the people. It is about time the junta understands that it has no legal or moral right to interfere with the transmissions of those facilities.

It should be emphasized that the junta and its cohorts are not even qualified to give a legal and credible interpretation of the provisions of the legally binding Security Council resolution 1132 (1997) on sanctions against the illegal regime. As ECOWAS recently noted, the junta has violated the sanctions and embargo by upgrading the airstrip at Magburaka for the illegal importation of arms and other supplies, and the travel restrictions on members of the junta and their families are being violated.

Furthermore, the junta has no moral right to complain and accuse the international community and Secretary-General Kofi Annan of downplaying the welfare of the people of Sierra Leone and of ignoring the deteriorating humanitarian crisis when, in fact, the junta has been diverting humanitarian assistance destined for the suffering people to members of its so-called ruling council and their diamond-mining armed officers. It is this same junta whose leaders and their agents continue to seize merchandise from shopkeepers, terrorize innocent civilians, and loot private homes and even foreign embassies.

It is sad that at this crucial stage of the implementation process, we are still faced with the problem of "one illegal regime with many discordant voices"; one regime with a dozen spokesmen endowed with the ability to fill the airwaves with conflicting statements on the same issues. Soon after the coup d'état in May 1997, the junta stated that it would hand over power within two months. It also spoke about another Bintumani-type consultative conference followed by elections. Then, in July, after its shocking announcement that it would not hand over power until the year 2001, the world was told that the head of the junta had made a mistake and that he did not really mean what he had broadcast to the nation. Recently, within days of his announcement in a British Broadcasting Corporation interview that the deadline of 22 April 1998 for the restoration of the democratically elected Government of President Kabbah may not be met, another senior member of the junta claimed that the junta leader's statement was misunderstood.

Therefore, the latest public statement that the junta is "still committed to the peaceful and successful implementation of the Conakry Peace Plan within the stipulated time-frame" should be received with some apprehension and scepticism.

If, indeed, as it claims, the illegal regime is committed to ensuring "that power is handed over back to ... President Kabbah", it should not inject any preconditions and impose on the international community its own self-serving interpretation of both the Security Council sanctions resolution and the ECOWAS Peace Plan it signed in Conakry in October 1997. These delaying tactics are unacceptable.

The people of Sierra Leone and their democratically elected Government under President Ahmad Tejan Kabbah will not accept any changes or amendments to the Conakry Peace Plan which would result in an extension of the deadline beyond 22 April 1998.

If the illegal regime is so concerned about the plight of the people of Sierra Leone, it should refrain from its unjustified criticisms of ECOWAS, the United Nations system and their personnel who are risking their own lives to bring peace to Sierra Leone. It should also immediately withdraw its unilateral demands, and make an honest and final commitment to facilitate the implementation of the Conakry Peace Plan.

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Security Council

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GENERAL

S/1998/35
15 January 1998

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE SITUATION CONCERNING WESTERN SAHARA

I. INTRODUCTION

1. Pursuant to Security Council resolution 1133 (1997) of 20 October 1997, I submitted a comprehensive report to the Council on 13 November (S/1997/882), including a detailed plan and timetable for the holding of the referendum for the self-determination of the people of Western Sahara in accordance with the settlement plan (S/21360 and S/22464 and Corr.1) and the agreements reached between the parties for its implementation (S/1997/742). Pursuant to that resolution, in which the Council also requested me to report regularly on the progress made in implementation of the settlement plan, I stated in my report that I intended to provide to the Council, by 15 January 1998, detailed information on progress in the identification operation, which was to be resumed on 1 December 1997, and to confirm that the transitional period might start on 7 June 1998 as planned.

2. In a letter to the President of the Security Council dated 12 December 1997 (S/1997/974), I reported that identification of potential voters in the referendum had resumed on 3 December, following preparatory work and the deployment of observers of the two parties (Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Rio de Oro (Frente POLISARIO)), of those of the Organization of African Unity (OAU), of tribal leaders (sheikhs) and of Identification Commission staff. My letter provided a detailed account of activities undertaken as at that date. The present report covers subsequent developments in the identification process and other aspects relevant to the implementation of the settlement plan.

II. DEVELOPMENTS DURING THE REPORTING PERIOD

3. On 26 December 1997 (see S/1997/1023), I informed the Security Council of my intention to appoint Mr. Charles F. Dunbar (United States of America) as my Special Representative for Western Sahara, to which the Council agreed in a letter from the President addressed to me on 30 December (S/1997/1024). Mr. Dunbar is expected to take up his duties in the mission area by the first week of February 1998, upon completion of the necessary consultations with my

Personal Envoy, Mr. James A. Baker III, at Headquarters in late January. Meanwhile, my Acting Special Representative, Mr. Erik Jensen, has continued to work actively with the Government of Morocco and the Frente POLISARIO to establish the measures necessary for identification to proceed as planned and to address other matters in implementation of the settlement plan.

Identification process

4. Since identification resumed on 3 December 1997 at Laayoune in the Territory of Western Sahara and at Camp Smara in the Tindouf area of southern Algeria, five other Identification Commission teams have begun work. Of the seven centres that are currently operating, three are in the Territory, two in the Tindouf area and two in southern Morocco. Arrangements have been initiated with the Mauritanian authorities for the opening of a centre at Zouerate on 2 February, at which time another team will start work in Morocco to reach the planned total of nine centres operating concurrently.

5. Following extensive consultations between my Acting Special Representative and the parties, the comprehensive list of tribal leaders required to provide oral testimony during identification was agreed by the parties and published on 20 December 1997.

6. Identification activities at the centres have been pursued vigorously, with the full participation of observers of the two parties and of OAU. Both parties have continued to maintain a positive and collaborative approach to the process. Nine of the 10 expected OAU observers, from Angola, Côte d'Ivoire, the Democratic Republic of Congo, Ethiopia, Guinea, the Niger, Nigeria, Sierra Leone and the United Republic of Tanzania, have taken up their duties under the direction of the Senior Representative.

7. Identification was suspended at Laayoune for three days, when sheikhs had fallen ill, but the Identification Commission made up for time lost by continuing the operation at weekends and during public holidays. Between 3 December 1997 and 10 January 1998, 18,688 persons were convoked. Of these, 13,227 came before the Commission, bringing to 73,399 the total number of persons identified since the start of identification in 1994.

8. Operational problems involving the parties have for the most part been resolved. Those pending include a request by Morocco that the place of identification for 900 individuals who were originally convoked at Tan Tan in southern Morocco should be at Goulemine, where they reside and where the Commission has opened another centre. The Frente POLISARIO has not agreed to having these individuals identified at Goulemine. The Identification Commission, however, considers this a technical issue falling within its competence to resolve, as underlined in the practical measures for the resumption of identification that were agreed to by the parties in Houston (S/1997/742, annex III, sect. III).

9. It will be recalled that, under the Houston agreements the parties agreed that they would not directly or indirectly sponsor for identification anyone from tribal groupings H41, H61 and J51/52 other than persons included in the 1974 census and their immediate family members, but would not actively prevent

individuals from such tribal groupings from presenting themselves. The parties also agreed that identification of any such individuals who might present themselves should proceed as soon as possible.

10. Identification sessions were held at Laayoune in the Territory for members of the above-mentioned three tribal groupings and at Camps Smara and Dakhla in the Tindouf area for members of tribal grouping J51/52. Some 830 persons included in the 1974 census and their immediate family members were convoked and identified at those sessions. During the actual convocation days, 3,927 unconvoked individuals presented themselves at Laayoune and 495 in the Tindouf area; and in succeeding days 8,613 individuals, mostly from tribal grouping H61, also came forward at Laayoune. The Frente POLISARIO protested that Morocco was in breach of the Houston agreements with respect to the sponsorship of non-convoked individuals. Identification sessions for tribal groupings H41 and J51/52 are scheduled in January at Dakhla town in the Territory. No arrangements have yet been made for such sessions in Morocco. It is proposed to programme for early February identification of the first group of persons who presented themselves on the days of convocation of members of tribal groupings H41, H61 and J51/52 at Laayoune and Dakhla.

11. In addition to the question of the unconvoked individuals from tribal groupings H41, H61 and J51/52 who presented themselves, two other cases arose: the procedure to be adopted for the same groups in Morocco; and Morocco's wish that, in addition to the two centres in southern Morocco envisaged in the work programme of the Identification Commission presented to the two parties, centres be opened in northern Morocco in view of the large number of applicants from non-contested groups who reside in that part of the country and are to be convoked.

12. The Identification Commission is now at two-thirds strength. The weekly rate of identification is scheduled to increase in January and again in the period from February to May in order to complete the identification programme by the end of May as planned. This is conceivable only if a full complement of Commission and support staff, all appropriately qualified, is in place by the end of January and if there are no interruptions from now until the end of the process.

13. The Chairman of the Identification Commission, Mr. Robin Kinloch, continues to meet frequently with senior officials of the two parties, and has met with ministers of the Government of Mauritania. The Commission has been issuing regular "operational communiqués" to inform all concerned of identification plans and procedures and to provide advance notice of centre programmes and such matters as the movement of observers and tribal leaders, deadlines for receipt of data and the issuance of convocation lists.

Civilian police aspects

14. Seventy-nine civilian police officers, including the Civil Police Commissioner, Chief Superintendent Peter Miller (Canada), are currently assigned to the United Nations Mission for the Referendum in Western Sahara (MINURSO). They are drawn from the following countries: Canada (5), Egypt (2), Ghana (10), India (10), Malaysia (10), Nigeria (10), Norway (2), Pakistan (10), Portugal

(10), and Sweden (10). Two civilian police officers are expected to arrive during January, bringing the civilian police component to its total strength of 81 as planned.

15. The work of the civilian police is closely linked to the identification process. Officers provide 24-hour security as required, escort the respective observers and tribal leaders (sheikhs) of the other party in the Tindouf area of southern Algeria and in Western Sahara and southern Morocco. Civilian police officers contribute directly to various identification activities, in addition to controlling access and ensuring order at the centres in Laayoune and Smara in the Territory, at the Smara and Dakhla camps in the Tindouf area and at Tan Tan and Goulemine in southern Morocco.

16. In preparing for the transitional period, the civilian police have established working groups to identify operational needs and coordinate the logistics required to accommodate the influx of additional personnel.

Military aspects

17. Under the command of Maj.-Gen. Bernd S. Lubenik (Austria), the military component of MINURSO continues to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO forces, which came into effect on 6 September 1991. No incidents have occurred and the situation in the MINURSO area of responsibility remains calm. There have been no significant indications that either side intends to resume hostilities in the near future. Both the Royal Moroccan Army and Frente POLISARIO forces have been cooperative with military observers in their respective areas.

18. After extensive consultations, the Force Commander reached a new military agreement with the two parties, which covers the present period until the start of the transitional period under the settlement plan. The agreement lays down guidelines and procedures to be followed by both the Royal Moroccan Army and the Frente POLISARIO forces in the framework of the ceasefire, to ensure that no hostility of any type is resumed. Any violations of the agreement as well as actions contrary to the spirit of the settlement plan are to be reported to higher authority. Under the agreement, the rights of the United Nations military observers in the performance of their duties are also defined.

19. During the reporting period, another important task was continued preparation for the full deployment of the military component and fulfilment of its mandate under the settlement plan and the Houston agreements, for which a new operational concept was developed and potential troop contributors have been actively approached on an informal basis. While remaining within the overall ceiling of the military force structure of 1,850 all ranks proposed in my report of 13 November 1997 (S/1997/882), it may be necessary to adjust the numerical balance of the various elements of the Force for operational, logistic or budgetary reasons.

Preparatory work for the repatriation of Saharan refugees

20. During the reporting period, the Office of the United Nations High Commissioner for Refugees (UNHCR) continued its preparatory work for the

repatriation of Saharan refugees as foreseen in the timetable proposed in my report of 13 November. In that connection, the UNHCR plan of action has been updated in order to finalize the special appeal for funds. Several missions were deployed to the region to present the UNHCR repatriation plan to the relevant authorities and continue with the discussions on the technical aspects related to the programme, to resume pre-registration of refugees in the Tindouf area, to initiate a public information campaign as a confidence-building measure and to conduct other activities related to the establishment of the UNHCR presence and infrastructure development in the area. Discussions were also held with the World Food Programme (WFP) regarding its role as foreseen in the UNHCR plan of action. The plan was also presented to the European Community Humanitarian Organization for fund-raising and coordination purposes.

III. ADMINISTRATIVE AND FINANCIAL ASPECTS

21. With the resumption of identification on 3 December 1997, the administrative support was mobilized. Although deployment of administrative staff was generally on target, shortages remained in the Identification Commission support staff. However, by the end of December 1997, the total number of civilian staff stood at 266 (194 international and 72 local).

22. The Government of Morocco extended its full assistance to accommodate the increased number of MINURSO staff, by providing additional hotel rooms in Laayoune, reopening hotel facilities in Smara and providing similar new facilities in Tan Tan and Goulemine. The Frente POLISARIO provided a school building to house Identification Commission members and support staff. The Government of Algeria has also made accommodation available in a newly built hotel in Tindouf.

23. Provision of communication network and transport equipment was initiated. Vehicles from the United Nations missions in Haiti and Angola were redeployed to MINURSO. Purchase of additional vehicles was also initiated by Headquarters under the replacement programme.

24. In consultation with the United Nations technical team that visited the mission area last October, funds were deployed to repair MINURSO team sites. Procedural arrangements were finalized by MINURSO for the provision of rations for up to 700 military personnel and support staff at team sites. Approval of the Moroccan Government is awaited to use the airfield at a Royal Moroccan Army base at Goulemine, which would greatly facilitate transfer of sheikhs and observers and permit more time for identification.

25. My revised budget for MINURSO, which provides for additional requirements of $17,489,100 gross to enable it to proceed with its identification tasks pursuant to Security Council resolution 1133 (1997), has been finalized and is expected to be issued shortly. Pending consideration of this budget by the General Assembly, the Advisory Committee on Administrative and Budgetary Questions has authorized me to enter into commitments of $9.3 million gross to meet the essential and immediate requirements for the identification process for the period ending 31 March 1998. As funds have not been made available for the deployment of the Engineering Unit, demining activities will not commence in

February 1998 as planned in the timetable proposed in my report of 13 November 1997 (S/1997/882), thus affecting the timely deployment of the military component of MINURSO and other elements of the implementation plan.

26. As at 31 December 1997, unpaid assessed contributions to the MINURSO special account for the period since inception to 31 December 1997 amounted to $48.9 million. The total of outstanding assessed contributions for all peacekeeping operations as at 31 December was $1,574.1 million.

IV. OBSERVATIONS

27. Between 28 August 1994, when the identification process was launched, and December 1995, when it came to a standstill, 77,058 persons had been convoked, of whom 60,112 had been identified by the Commission. Between 3 December 1997 and 10 January 1998, 18,688 persons were convoked, and 13,227 identified. The Commission has now achieved a threefold increase in the weekly rate of identification. Promising progress has thus been made since the resumption of the process.

28. Nevertheless, the completion of the identification phase by 31 May 1998 will be a daunting and arduous task, involving the convocation of more than 100,000 applicants and their identification in less than five months. This will require the continued commitment and support of the parties and an early resolution of issues related to tribal groupings H41, H61 and J51/52.

29. In consultation with my Personal Envoy, and in conformity with the Houston agreements, I have decided to instruct MINURSO to proceed as soon as possible with the identification of those unconvoked individuals who presented themselves on the days of convocation of their respective tribal groups.

30. With regard to applicants from non-contested tribes resident in northern Morocco, who were initially expected to travel to the identification centres at Tan Tan and Goulemine in southern Morocco, I have concluded that, given their large number, it would be considerably more practical, from a logistic point of view, to convoke and identify them in the northern part of the country. I have decided therefore that identification sessions initially scheduled to take place in Tan Tan and Goulemine for applicants resident in northern Morocco should be held at two northern locations where the number of resident applicants exceeds 10,000, that is, at El Kelaa des Sraghna and at Sidi Kacem. I count on the cooperation of the two parties to ensure that these arrangements proceed smoothly.

31. Until the number of non-convoked persons presenting themselves is known for certain, it will not be possible to confirm that the identification process can be concluded by the end of May to permit the start of the transitional period on 7 June 1998 as planned. Nevertheless, I remain convinced that, in order to keep the momentum, it is essential that every effort be made to adhere as strictly as possible to the timetable presented in my report of 13 November 1997 (S/1997/882). In addition to the continued commitment and cooperation of the parties, this requires, as underlined in my letter to the President of the Security Council dated 12 December 1997 (S/1997/974), the provision of the

necessary resources in full and on time, including the early deployment of the engineering and other resources to undertake the required operational demining and prepare for the deployment of the military component of the Mission. I appeal therefore to the Security Council and the General Assembly to extend all the necessary support in this regard, so that the overall objective of holding the referendum by the end of 1998 may still be maintained.

Map No. 3691 Rev. 15 UNITED NATIONS
December 1997

Department of Public Information
Cartographic Section

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/36
15 January 1998
ENGLISH
ORIGINAL: ARABIC

IDENTICAL LETTERS DATED 15 JANUARY 1998 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL AND TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government, I have the honour to inform you that violations of Iraq's airspace by United States aircraft continued over the period 5 to 12 January 1998 and that the aircraft in question carried out reconnaissance and engaged in acts of provocation, as set forth in the annex hereto.

You are requested to intervene with a view to bringing a halt to actions that, as flagrant violations of the Charter of the United Nations and the provisions of international law, pose a threat to the sovereignty and territorial integrity of the Republic of Iraq.

These actions continue to alarm the civilian population and to cause serious damage to private and public property. The Republic of Iraq affirms its right to seek legal compensation for the damage being inflicted on the Iraqi people and the Iraqi State by these actions.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

Annex

Details of violations of Iraq's airspace and damage caused, 5-12 January 1998

1. In the northern region 66 sorties were flown at speeds of 600 to 900 kilometres per hour and at altitudes of 6,000 to 9,000 metres, over the following Iraqi cities and towns: Dohuk, Mosul, Amadiyah, Aqrah, Zakho, Irbil, Tall Afar, Baibo, Rawanduz, Kuysanjaq and Dukan.

2. In the southern region 568 sorties were flown at speeds of 600 to 900 kilometres per hour and at altitudes of 6,000 to 9,000 metres, over the following Iraqi cities and towns: Nasiriyah, Samawah, Artawi, Ushbayjah, Jalibah, Salman, Busayyah, Qurnah, Chabaish, Shinafiyah, Kut, Rumaythah, Habariyah, Rahhaliyah, Basra, Hayy, Shatrah, Amarah, Lasaf, Hamzah, Diwaniyah, Rifa'i, Nukhayb, Qal'at Salih, Diwaniyah and Maymunah.

3. Four sorties were flown by United States TR-1 reconnaissance aircraft at altitudes of 20,000 metres and at speeds of 600 kilometres per hour.

4. At 1610 hours on 10 January 1998 a formation of two United States aircraft broke the sound barrier over the city of Mosul.

UNITED NATIONS **S**

Security Council

Distr.
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S/1998/37
16 January 1998

ORIGINAL: ENGLISH

LETTER DATED 22 DECEMBER 1997 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I am pleased to inform you that the Governing Council of the United Nations Compensation Commission concluded its twenty-sixth session, held at Geneva from 15 to 17 December 1997. The session was preceded by an informal meeting of the Working Group of the Council and two meetings of the Council's Committee on Administrative Matters.

The delegations from Kuwait and Iraq addressed the Council during its opening plenary meeting.

During its closing plenary meeting, the Council approved the report and recommendations of the Panel of Commissioners concerning part one of the first instalment of claims by Governments and international organizations (category F claims) (see annex I). This instalment concerned 11 claims filed by nine Governments. The Governing Council approved the award of US$ 2,220,043 in respect of nine claims (see annex II). The remaining two claims will be dealt with in a separate report.

With the approval of part one of the first instalment of category F claims, the Council has commenced the resolution of large claims. All claims in categories A and B and five out of seven instalments of claims in category C have been successfully resolved.

The Council conducted a protracted discussion of the report of the Panel of Commissioners concerning part one of the first instalment of category D claims (individual claims for damages above US$ 100,000). As no consensus was reached on the appropriate form that the decision approving the Panel's recommendations should take, the Council decided that the matter should be further discussed and a decision taken at a special session of the Council.

The Governing Council considered and took note of a report prepared by the Executive Secretary on the activities of the Commission between September and November 1997.

On the basis of a number of reports and information notes prepared by the secretariat, the Council discussed several issues relating to the processing and

payment of claims, some of which had been carried over from the previous session. These issues included the status of the category C claims of Afghanistan, which the Council decided to accept for "late filing". However, as all the items on the agenda could not be fully discussed, those items which were not resolved will be considered at the next session.

At the meetings of the Committee on administrative matters that took place on 10 and 15 December 1997, the Council discussed and approved the Executive Secretary's proposed budget for the biennium 1998-1999.

Finally, the Governing Council decided to hold its twenty-seventh session from 9 to 11 March 1998.

(Signed) Gonçalo DE SANTA CLARA GOMES
President of the Governing Council
United Nations Compensation Commission

Annex I

Report and recommendations of the Panel of Commissioners concerning part one of the first instalment of claims by Governments and international organizations (category F claims)*

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Introduction

1. Following the creation of the United Nations Compensation Commission (the "Commission") by the United Nations Security Council 1/, the Commission's Governing Council (the "Governing Council") established six claims categories in which individuals, corporations and Governments could seek compensation for losses arising out of Iraq's invasion and occupation of Kuwait. Governments and international organizations were required to file their claims in category "F". Based on the claimants' classification of their claims, 42 Governments and 3 international organizations submitted 298 category "F" claims seeking compensation for a total amount of approximately 141 billion United States dollars ("US$") for their alleged losses. 2/

2. During its twenty-first session, on 22-23 July 1996, the Governing Council appointed a Panel of Commissioners composed of Mr. Bjørn Haug as Chairman and Messrs. Georges Abi-Saab and Michael J. Bonell as Commissioners (the "Panel") to review category "F" claims. In his reports of 30 April and 31 July 1996 to the Governing Council, the Executive Secretary of the Commission included the claims that are the subject of this report. 3/ The reports were issued in accordance with article 16, paragraph 3, of the Provisional Rules for Claims Procedure (the "Rules"). 4/ As provided for in the Rules, these reports were circulated to the members of the Governing Council, to the Government of the Republic of Iraq, and to Governments and international organizations that had submitted claims. Pursuant to article 32, paragraph 1, of the Rules, a number of Governments, including Iraq, submitted additional information and their views on the Executive Secretary's reports to the secretariat for transmission to the Panel.

3. On 20 March 1997, the first instalment of eleven category "F" claims was submitted to the Panel pursuant to article 32 of the Rules. Nine of the claims in the first instalment (the "Claims") for a total amount of approximately US$4,506,800 are the subject of this report. The following Claims were filed by Governments for certain of their political subdivisions, agencies, ministries, instrumentalities or controlled entities with the approximate amount claimed noted in parenthesis: 5/

(a) The Democratic People's Republic of Korea: State Commission of External Economic Affairs (US$1,148,474.28);

(b) The Kingdom of Denmark: Ministry of Foreign Affairs (US$747,734.79);

(c) The Federal Republic of Germany: North Rhine-Westphalia Ministry of Employment, Health and Social Affairs (US$180,287.46);

(d) The Republic of Hungary: Ministry of Foreign Affairs (US$219,044.09) and Ministry of International Economic Relations (US$59,055.61);

(e) The Kingdom of the Netherlands: Ministry of Foreign Affairs (US$351,917.15);

(f) New Zealand: Ministry of Foreign Affairs and Trade (US$76,366.67);

(g) The Federal Republic of Nigeria: Nigerian Embassy in Kuwait (US$403,771.51);

(h) The Democratic Socialist Republic of Sri Lanka: Ministry of Foreign Affairs (US$1,273,356.40).

These entities are referred to herein as "Claimants".

4. In article 38(e) of the Rules, the Governing Council provided that the Panel:

> "... report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be awarded for each claimant. Each report will briefly explain the reasons for the recommendations."

Pursuant to such requirement, this report contains the Panel's findings and recommendations regarding the Claims.

5. The remaining two claims in the first instalment (the "Kuwaiti Claims") were submitted by Kuwait University and the Kuwait Ministry of Foreign Affairs (the "Kuwaiti Claimants"). For the reasons explained in the next paragraph the Panel will issue a separate report covering the Kuwaiti Claims in due course.

I. PROCEEDINGS

6. Based on the amount of compensation sought, the complexity of the legal issues raised and the volume of documentation filed in support of the Kuwaiti Claims, the Panel decided to classify them as "unusually large or complex", pursuant to article 38(d) of the Rules. Accordingly, the Panel gave notice to the Kuwaiti Claimants of its intention to complete its review of the Kuwaiti Claims within 365 days. Given those same considerations, the Panel determined that it would be possible to complete the review of the remaining nine Claims and submit a report and recommendations to the Governing Council within 180 days, in accordance with article 38(c) of the Rules.

7. On 21 March 1997, the Panel issued its first Procedural Orders. The Panel's classification of the Kuwaiti Claims as well as the remaining nine Claims was stated in the Procedural Orders that were transmitted by the secretariat to each Claimant. On the Panel's instructions, the secretariat transmitted copies of such Orders to Iraq.

8. In the preliminary review of the Claims, it was noted that several of the Claimants were seeking compensation for payments made to employees or other persons for the loss of tangible property or the loss of income or support. Because the individuals themselves may have been eligible to file claims with the Commission for such losses in categories "C" and "D", the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of decided or pending category "C" and "D" claims. 6/ At the Panel's request, the secretariat consulted the Commission's claims databases and dockets and determined that there was a potential overlap between several of the Claims and certain category "C" claims.

9. As part of its effort to verify the Claims and, given its concern over the possible duplication of claims across categories, the Panel included interrogatories and requests for the production of documents in the Procedural Orders for five of the Claims. These Orders sought, inter alia, detailed information regarding the potential overlap between the Claims and the individual claims filed in category "C". 7/ The relevant Claimants were requested to file their responses by 20 May 1997. As a result of this process, portions of several Claims were disallowed because they sought compensation for losses that had been the subject of category "C" claims. 8/

10. The Panel considered that a third party, the Central Bank of Kuwait, might possess relevant information regarding the Sri Lankan claim. Accordingly, the Procedural Order issued for that Claim requested that the Government of Kuwait comment on certain statements made within the Claim and file any documents relevant to the Claim with the Commission.

11. On 17 April 1997, the Panel issued a Procedural Ruling regarding the Nigerian claim. In its ruling, the Panel noted that a portion of the Claim sought compensation for tangible property lost by the Claimant's Finance Attaché in Kuwait. However, the Claim contained no evidence demonstrating that the Claimant itself actually incurred a loss by reimbursing its employee for his property loss. The Panel, therefore, ruled that the portion of the Claim relating to the Finance Attaché's tangible property loss should be severed from the Claim. The Panel instructed the secretariat to return the documents relating to the severed portion of the Claim to the Government of Nigeria and to inform Nigeria that its Finance Attaché could seek compensation for his loss by submitting a new claim in category "C". On 15 May 1997, in accordance with the Panel's Procedural Ruling, Nigeria resubmitted this portion of the Claim in category "C" on behalf of its Finance Attaché.

12. Sri Lanka stated in its response to the Panel's Procedural Order that certain of the evidence requested was in the custody of its former Honorary Consul in Jordan. Deeming that such evidence, banknotes with a face value of 368,000 Kuwaiti dinars ("KD"), was critical to the verification of the Claim, on 23 May 1997 the Panel issued a further Procedural Order requesting that the evidence be produced at the Commission's headquarters

in Geneva on or before 30 June 1997. The Claimant complied with the Order and delivered the banknotes to the Commission on 18 June 1997.

13. In its proceedings, the Panel held regular sessions with the assistance of the secretariat. These sessions were conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The services of an independent loss adjusting firm were also retained to assist the secretariat and the Panel in reviewing the Claims.

II. THE CLAIMS

14. Pursuant to Governing Council decision 7 9/, the category "F" claim form used by Governments for submitting their claims classifies losses as follows: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs (of citizens or other nationals); public service expenditures; environmental damage and depletion of natural resources. The Panel notes that several of these classifications relate to losses incurred by States in the exercise of their protective functions. The Claims allege eight of these eleven loss types. The Claimants' contentions regarding their losses are briefly described below by loss type. In some cases, based on its review of the documents underlying the Claims, the Panel has reclassified the losses stated by Claimants on their claim forms.

A. Contract

1. Hungary

15. The Hungarian Ministry of Foreign Affairs 10/ claims that, following Iraq's invasion and occupation of Kuwait, it was required to close its embassy in Kuwait City on or about 31 August 1990. The Claimant states that, following the closure of its embassy, it made "redundancy payments" to its local staff pursuant to the terms of their employment relationship, which was governed by Kuwaiti labour law. Hungary seeks compensation in the amount of US$21,067 for the expenses it incurred in making such redundancy payments.

2. The Netherlands

16. The Netherlands claims that "Iraq's armed attacks on Kuwait caused extensive damage to [its diplomats'] household effects, while many personal belongings disappeared in widespread plundering by [the] Iraqis." The Claimant states that "once it was possible to make an estimate of the actual damage to their personal property, staff of the embassies in Kuwait and Baghdad were reimbursed for the loss of and or damage to their property". The Claimant asserts that it was required to make the reimbursements pursuant to the Netherlands Foreign Service Regulations which govern the employment relationship between the Claimant and its

diplomatic personnel. The Netherlands seeks compensation in the amount of 225,980.28 Netherlands guilders ("f.") for the expenses it incurred in making the reimbursements.

3. New Zealand

17. New Zealand claims that it made severance payments to the local staff at its embassy in Baghdad after that embassy was closed on 12 December 1990. The Claimant states that the payments were made in accordance with the employment contracts that it had previously entered into with the workers. New Zealand seeks compensation in the amount of 36,179 New Zealand dollars ("$NZ") for the expenses it incurred in making such redundancy payments.

B. Business transaction or course of dealing

Democratic People's Republic of Korea

18. The Democratic People's Republic of Korea, which operated a trade mission in Kuwait City prior to the invasion, claims that on 23 June 1990 it paid a deposit on a new car to a Kuwait City automobile dealer. The car was never delivered to the Claimant. After the liberation of Kuwait, the Claimant requested that the dealer either deliver the car or refund its deposit. The dealer refused, stating that he could not refund the Claimant's money until he had been "compensated for all cars [he] lost during the war from the UNCC". The Claimant seeks compensation in the amount of KD 5,825.500 for its lost deposit on the new car.

C. Real property

1. Denmark

19. Denmark claims that, following Iraq's invasion of Kuwait, it attempted to keep its embassy in Kuwait City open. However, Iraq reportedly refused "to recognize the Embassy of Denmark in Kuwait and subsequent[ly] order[ed]" that it be closed down. The Claimant alleges that it had paid rent in advance for its embassy premises for the period of the occupation of Kuwait but, due to the forced closure of the embassy as of 10 September 1990, it was deprived of the use of the premises. Denmark seeks compensation in the amount of 266,151 Danish krone ("DKr") for rent that it prepaid for its embassy premises in Kuwait City during the period of the occupation.

2. Hungary

20. Following Iraq's invasion of Kuwait, the Hungarian Ministry of Foreign Affairs evacuated its diplomats from Kuwait and Iraq. The Claimant asserts that, upon resuming operations at its embassies in both countries, it was required to repair the buildings and to replace "damaged and scrapped assets", including security systems, in Baghdad and Kuwait City.

Hungary seeks compensation in the amount of US$73,037.81 for such repair and replacement costs.

21. The Hungarian Ministry of International Economic Relations maintained a commercial section at the Hungarian embassy in Kuwait City. In a separate claim from that submitted by the Ministry of Foreign Affairs, it alleges that, following the liberation of Kuwait, it was required to repair physical damage to the offices of its commercial section. Hungary also seeks compensation in the amount of KD 5,973.722 for these repair costs.

3. Nigeria

22. The Claimant states that, following the Iraqi invasion of Kuwait, it evacuated its diplomats and temporarily closed its embassy in Kuwait City. Following the liberation of Kuwait, the Claimant asserts that, among other damage inflicted, the embassy had been vandalized, the garden ruined and two of the walls of the embassy contained bullet holes. Nigeria seeks compensation in the amount of US$12,655 for the costs of repairing the damage to its embassy.

D. Tangible property

1. Democratic People's Republic of Korea

23. The Democratic People's Republic of Korea alleges that at dawn on 16 September 1990, during the Iraqi occupation of Kuwait

> "... five armed men came in the premises of the Trade Representation of DPRK in Kuwait and at gunpoint destroyed two safes to take away 550 thousand German Marks and three bars of gold each weighing 12.5 kilograms ..."

The Claimant seeks compensation in the amount of US$799,832.92 for the loss of such currency and gold.

24. The Claimant also asserts that "as a result of ... Iraq's 2 August 1990 invasion of Kuwait, the Trade Representation of the Democratic People's Republic of Korea could not continue to carry out its mission and had to evacuate its officials from Kuwait on 16 September 1990". The Claimant states that, when its representatives returned to Kuwait following its liberation, they found that the trade mission's office equipment had been looted. The Claimant seeks compensation in the amount of KD 5,840 for its lost office equipment.

25. The Claimant further asserts that, having been evacuated from Kuwait, its employees and citizens were required by Iraq to go to Baghdad. When the evacuees were eventually allowed to leave Iraq, the Claimant states that "the seven families had to leave the cars parked outside the courtyard of the Embassy of the People's Republic of China in Iraq" and that afterwards Iraqi officials took possession of the cars. The Democratic

People's Republic of Korea seeks compensation in the amount of KD 64,200 for the cars allegedly taken by Iraqi officials.

2. Denmark

26. Denmark claims that the furniture, security and telecommunications equipment and an automobile located at its Kuwait City embassy were damaged or stolen during the period of the Iraqi occupation. The Claimant alleges that even before it was forced to evacuate its embassy

> "... Iraqi military forces broke into the residence of the Ambassador on 25 August 1990 in order to rig up gun nests on the roof. Iraqi military personnel committed burglary in the chancellery on 29 August and on 13 September 1990."

Denmark seeks compensation in the amount of DKr 389,485 for the lost or damaged furniture, equipment and car.

3. Hungary

27. Hungary's Ministry of International Economic Relations claims that its Kuwait City offices were "ransack[ed] and damage[d]" "by the invading Iraqi soldiers" following Iraq's invasion of Kuwait. The Claimant states that, when its representatives returned to Kuwait, they found that its office equipment and supplies were "missing" or "damaged beyond repair". The Claimant also asserts that four apartments that it maintained for its diplomats were looted during the Iraqi occupation of Kuwait. Hungary seeks compensation in the amount of KD 11,094.250 for the lost or damaged office equipment and the contents of its apartments.

4. New Zealand

28. New Zealand claims that one of its Baghdad embassy vehicles was in Kuwait for repair and maintenance at the time of the Iraqi invasion. The Claimant states that it was unable to recover the vehicle before its embassy in Baghdad was closed. It asserts that, following the liberation of Kuwait, its efforts to trace the vehicle were unsuccessful. New Zealand seeks compensation in the amount of $NZ 17,322 for the lost vehicle.

5. Nigeria

29. After closing its embassy in Kuwait City, Nigeria evacuated its diplomats and others by car via Baghdad. The Claimant asserts that during the evacuation several of its cars were left in Baghdad. Following the liberation of Kuwait, the Claimant states that it sent its employees to Baghdad to recover the vehicles, which they did. Nigeria seeks compensation in the amount of US$29,810.31 for the cost of recovering the vehicles that were left in Baghdad during the evacuation.

E. Bank accounts and securities

New Zealand

30. New Zealand claims that, prior to the Iraqi invasion of Kuwait, it maintained an Iraqi dinar bank account at the Al Ahli Bank of Kuwait. The Claimant alleges that the "closure of the Al Ahli Bank of Kuwait at the time of the invasion prevented [it] from recovering a credit [balance] in the account". As of the date it submitted its Claim, the Claimant states that it was unable to have access to its funds. New Zealand seeks compensation in the amount of $NZ 7,388 for the money held in its Iraqi dinar denominated bank account in Kuwait.

F. Payment or relief to others

1. Germany

31. Germany claims that the Iraqi invasion of Kuwait

> "... caused both German and non-German individuals to leave Kuwait and take refuge in Germany or other countries. Under German social assistance laws, such individuals received financial support. To all intents an[d] purposes, these benefits must be seen as part of the damages caused by the unlawful invasion of Iraqi forces into Kuwait."

32. The Claimant states that it gave financial support to several German nationals who fled Kuwait following the invasion leaving their assets behind or who lost their jobs or means of support in Kuwait; to an Iraqi national and his family who had fled Kuwait and sought political asylum in Germany; to Kuwait-based students studying in Germany whose source of parental support was cut off after the Iraq invasion; and to a Kuwaiti national who had been on holiday in Germany and was stranded at the airport when his flight home was cancelled due to the invasion. Germany seeks compensation in the amount of 281,609.02 deutsche mark ("DM") for the financial support that it paid to such persons.

2. Hungary

33. The Hungarian Ministry of Foreign Affairs claims to have incurred "[e]xtraordinary compulsory vacation costs of the Hungarian staff of embassies both in Kuwait and Baghdad" following their evacuation from those countries. Hungary seeks compensation in the amount of US$21,898 for such costs.

3. The Netherlands

34. The Netherlands claims that, following the Iraqi invasion of Kuwait, it introduced a "financial assistance scheme" for its Middle Eastern diplomats and their families in order

> "... to help cover the extra costs incurred by personnel who remained [in the Netherlands instead of returning to their duty posts], their families, and personnel and the families of personnel who were repatriated [to the Netherlands] at a later stage".

35. The Claimant states that the scheme covered items such as rent for furnished accommodation, hotel accommodation, school fees, a clothing allowance and an allowance for families who were obliged to remain in the Netherlands without a partner. The Netherlands seeks compensation in the amount of f. 393,745.82 for the costs it incurred through its financial assistance scheme.

4. Sri Lanka

36. Sri Lanka claims that its Honorary Consul in Jordan provided humanitarian support to the thousands of Sri Lankan refugees who fled Kuwait via Jordan following the Iraqi invasion of Kuwait. The Claimant asserts that, in the aftermath of the invasion, Jordanian banks would not exchange its citizens' Kuwaiti currency for Jordanian currency. The Sri Lankan refugees, it claims, were thus unable to purchase airline tickets out of Jordan or necessities of life in Jordan.

37. The Claimant states that its Honorary Consul, in light of this situation, exchanged KD 741,000 of the refugees' money. It asserts that the currency exchanges were made only in small amounts for each person and were made solely in order to provide the refugees with funds for urgent expenses. The Claimant contends that, after the liberation of Kuwait, the Central Bank of Kuwait refused to accept KD 368,000 of the banknotes exchanged by the Claimant's Honorary Consul. The Central Bank of Kuwait rejected the banknotes because their serial numbers indicated that they were among the notes looted from the vaults of the Central Bank by Iraqi forces during the occupation. The Claimant alleges that immediately upon entering Kuwait City the Iraqi forces stole the dinar notes from the Central Bank and circulated them. Such notes, according to the Claimant, ultimately ended up in the hands of the Sri Lankan refugees. This assertion is also made by the Government of Kuwait, which has filed a separate claim for its Central Bank arising out of the theft. 11/ Sri Lanka seeks compensation in the amount of KD 368,000 for its invalid bank notes.

G. Evacuation costs

1. Democratic People's Republic of Korea

38. The Democratic People's Republic of Korea claims that it was required to evacuate its trade representatives and citizens from Kuwait on a journey that took them through Iraq, Jordan and other countries before eventually reaching Pyongyang. The Claimant states that, upon their arrival in Baghdad, its evacuees "had to stay from 16 to 20 September 1990 at the

expense of the Government of the DPRK in [the] Rasheed hotel in Baghdad because the Iraqis did not allow the families to leave Iraq until the families obtained through [an] unofficial channel the exit permission with extra cost". The Claimant seeks compensation in the amount of US$83,392.23 for the cost of evacuating its trade representatives and citizens from Kuwait to Pyongyang. This amount includes the sum paid through an unofficial "Iraqi channel" for permission to leave Iraq.

2. Denmark

39. Denmark claims that it incurred expenses as a result of "the forced evacuation of a number of Danish citizens from Kuwait and their illegal detention in Baghdad by the Government of Iraq". The Claimant states that the

> "... basic pattern as regards Danish citizens was that most of them left Kuwait organized as a group on 23 August 1990 in a motor-car convoy to Baghdad. There, since the Authorities did not immediately grant permission to leave the country, they had to be accommodated in hotels at the expense of the Danish Government, until they were allowed to leave, in small or larger groups."

40. In addition to evacuating its citizens from Kuwait and Iraq, the Claimant asserts that it was required to evacuate its diplomats from Kuwait City and Baghdad as well as from other Middle Eastern cities, including Ankara, Riyadh, Teheran, Tel Aviv and Damascus. Denmark seeks compensation in the amount of DKr 3,822,547.67 for the costs it incurred in evacuating its citizens and diplomats from Iraq, Kuwait and other Middle Eastern countries.

3. Hungary

41. The Hungarian Ministry of Foreign Affairs claims that, in the aftermath of the Iraqi invasion of Kuwait, it was required to evacuate "Hungarian citizens from Kuwait and Baghdad". In connection with the evacuation, the Claimant alleges that it paid for buses, catering services and chartered aircraft for its evacuees. The Claimant also asserts that it evacuated its diplomats from Kuwait and Iraq to Budapest by car. Hungary seeks compensation in the amount of US$103,041 for the expenses it incurred in evacuating its diplomats and citizens from Iraq and Kuwait.

4. The Netherlands

42. The Netherlands claims that "[a]t the beginning of December 1990, all remaining members of staff from the embassy in Kuwait, including the ambassador were repatriated from Baghdad where they had been since leaving Kuwait". The Netherlands seeks compensation for an unspecified amount associated with the evacuation of its diplomats from Kuwait and Iraq.

5. New Zealand

43. New Zealand claims that the invasion of Kuwait "forced the closure of the New Zealand Embassy" in Iraq several months later. As a result, it was required to evacuate its diplomats from Baghdad. The Claimant states that:

> "... under normal circumstances, the two New Zealand staff at the Embassy would have been returned to New Zealand as part of a preplanned transfer within the standard budget ... [but] circumstances created by the invasion forced the Ministry to use evacuation plans in less than ideal conditions. The consequence of this was that the two officers were transferred at a cost ... more than a normal transfer."

New Zealand seeks compensation in the amount of $NZ 36,312, which represents the difference between the cost of evacuating its diplomats after the invasion and the cost of transferring them under normal circumstances.

44. The Claimant also asserts that its embassy in Baghdad supported and provided relief to New Zealand nationals in Iraq who were "adversely affected by the invasion of Kuwait" and were evacuated from the country. Such support "required the provision of services and resources over and above those provided in the normal operation of the New Zealand Embassy in Baghdad". New Zealand also seeks compensation in the amount of $NZ 26,514 for the extraordinary expenses that its embassy incurred assisting in the evacuation of its nationals from Iraq.

6. Nigeria

45. Nigeria claims that it "evacuated its five member staff and all their family members, nine resident Nigerians and members of their family, six Sierra Leone nationals, six Beninese nationals, one Togolese together with all their family members from Kuwait through Baghdad, Jordan to Egypt". The Claimant states that the embassy staff members were evacuated to Abu Dhabi, while the Nigerian civilians were evacuated "to Nigeria [and] the other African nationals were handed over to their respective [embassies] in Cairo Egypt." Among the expenses the Claimant asserts that it incurred was the purchase of 60 gas masks for the evacuees. Nigeria seeks compensation in the amount of US$107,500.63 for these evacuation costs.

H. Public service expenditures

Nigeria

46. Nigeria claims that, following the Iraqi invasion of Kuwait, its Kuwait City embassy was asked by the Nigerian Ministry of Foreign Affairs to relocate its Ambassador and staff to Abu Dhabi. Following the liberation of Kuwait, the Claimant asserts, it relocated its operations back to Kuwait City. Consequently, it claims that it incurred substantial

operating expenses for its temporary embassy in Abu Dhabi during the period of the occupation of Kuwait. Nigeria seeks compensation for such expenses in the amount of US$204,126.74.

III. LEGAL FRAMEWORK

A. Applicable law

47. After the suspension of offensive combat operations by Kuwait and the United Nations Member States cooperating with Kuwait, the Foreign Minister of Iraq confirmed, in letters to the Security Council, Iraq's agreement to comply fully with all of the relevant resolutions 12/ thereby recognizing the responsibility of Iraq "under international law ... for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq". 13/

48. The Security Council, in paragraph 16 of resolution 687 (1991), decided that "Iraq ... is liable under international law for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". In passing resolution 687 (1991), the Security Council acted in the exercise of its powers to maintain and restore international peace and security under Chapter VII of the United Nations Charter. 14/

49. Based on the foregoing, the Panel considers as established the responsibility of Iraq under international law for the above-mentioned direct losses, damages or injuries. 15/

50. Pursuant to article 31 of the Rules, the Panel in deciding the claims shall apply the following:

> "... Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

51. The Governing Council has provided some guidance on the issue of what types of loss are to be considered direct and, therefore, compensable. The most relevant decisions of the Governing Council to the Claims covered by this report are decisions 7 and 9.

52. In decision 7, the Governing Council considered direct losses to include

> "... any loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August to 2 March 1991; ... [d]eparture of persons from or their inability

> to leave Iraq or Kuwait (or a decision not to return) during that period; ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation; ... [t]he breakdown of civil order in Kuwait or Iraq during that period; or ... [h]ostage-taking or other illegal detention". 16/

53. In the same decision, the Governing Council added, in paragraph 36, that such losses include "loss of or damage to property of a Government, as well as losses and cost incurred by a Government in evacuating its nationals from Iraq or Kuwait". Moreover, the Governing Council stated that compensation is available to "reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

54. In decision 9, the Governing Council further defined what constitutes a direct loss by deciding that "[i]n a case where business property had been lost because it had been left unguarded by company personnel due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". 17/ While decision 9 focuses on business losses, it is the Panel's view that the Governing Council's guidance regarding directness and causation where unguarded property has been damaged or destroyed is equally applicable to Government claims. 18/

55. These rules and directives governing the activities of the Panel have been interpreted in light of general principles of international law. Such international legal principles were also applied by the Panel to fill gaps where necessary.

B. Procedural and evidentiary requirements

56. In contrast to the simplified statement of claim and evidentiary requirements imposed on individual claimants seeking compensation in the expedited "A", "B" and "C" claims categories, the Governing Council expressly stated that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for a claim to receive compensation with respect to business losses. 19/ In the Panel's view, this requirement applies to all claims in category "F".

57. All category "F" claimants were required to "submit with the[ir] claim forms ... a separate 'Statement of Claim'" which had to include the following particulars:

> "[t]he date, type and basis of the Commission's jurisdiction for each element of loss; ... [t]he facts supporting the claim; [t]he legal basis for each element of the claim; and [t]he amount of compensation sought and an explanation of how this amount was arrived at". 20/

58. In addition to submitting a statement of claim, under article 35, paragraph 1, of the Rules, all category "F" claimants were required to submit "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 21/ The Governing Council emphasized the mandatory nature of this requirement in decision 7, paragraph 37, which states that "[s]ince these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence".

59. Pursuant to article 6, paragraph 5, of the Rules, the statement of claim and any documents submitted in support of a claim "must be submitted in English or be accompanied by an English translation".

60. In its review of the Claims, the Panel found that all the Claims contained a statement of claim and evidence sufficient to establish at least parts of certain loss elements alleged within the Claims. But the Panel also found that within certain Claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other evidence sufficient to demonstrate the circumstances and amount of the claimed loss. In such cases, the Panel could not recommend that compensation be awarded for the unsubstantiated losses. The Panel's decision not to recommend compensation for portions of Claims that did not state the circumstances of the alleged loss with particularity or that were not supported by evidence sufficient to establish such a loss is not only in accordance with the Rules of the Commission, but is also consistent with the general principles of international procedural law and practice. 22/

61. Where Claimants submitted a statement of claim meeting the Commission's requirements and the statement was supported by documentary or other evidence, the Panel was required, under article 35, paragraph 1, of the Rules, to "determine the admissibility, relevance, materiality and weight" of such evidence. In evaluating the evidence submitted by the Claimants, the Panel had to decide whether such evidence was sufficient to demonstrate the circumstances and the amount of the claimed loss.

62. In many of the Claims the Claimants' documentary or other evidence established that an alleged loss had, in fact, occurred. But the evidence was insufficient in those Claims to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation that should be awarded. 23/ In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a Claimant given the overall circumstances at the time of the loss, particularly in Iraq and Kuwait.

C. The Panel's role in the proceedings

63. In order to make its report on the Claims to the Governing Council and recommend the amount that should be awarded to each Claimant, the Panel

was required to make determinations of law and fact for every Claim. The Panel determined, on the basis of the facts that it considered had been substantiated by each Claimant, whether the loss was eligible for compensation under the applicable rules and criteria. If the loss was found to be compensable, the Panel then determined the proper amount of compensation that should be awarded. 24/

64. In view of the fact that Iraq had limited opportunities to comment on or object to the Claims, the Panel considered that it was under a stringent duty to determine with respect to each Claim whether the alleged loss had occurred, whether it was directly caused by Iraq's invasion and occupation of Kuwait and whether the amount of loss was adequately established. Furthermore, the Panel has given careful consideration to the legal positions taken by Iraq as well as by other Governments that submitted additional information and their views on the Executive Secretary's reports circulated pursuant to article 16 of the Rules.

IV. COMPENSABILITY OF THE CLAIMS

65. The Panel now considers the compensability of the Claims in light of the legal framework set out above.

A. Contract

66. New Zealand and the Hungarian Ministry of Foreign Affairs seek compensation for redundancy payments that they made to their local employees upon the closure of their embassies in Kuwait and Iraq, respectively. The relationship between the Claimants and their former employees was contractual in nature and the terms of such contracts, whether written or implied by law, required that the payments be made upon termination of the employment relationship.

67. The Netherlands seeks compensation for reimbursements that it made to its diplomats whose property was lost or damaged in Kuwait or Iraq. Here, again, the relationship between the Claimant and its diplomats was contractual in nature and the regulations governing the relationship required the Claimant to make the reimbursements.

68. As noted above, the Governing Council in decision 7 provided that compensation is available to "reimburse payments ... by Governments ... to ... employees ... pursuant to contractual obligations -- for losses covered by any of the criteria adopted by the Council". 25/ For individuals such criteria include "losses of income, support, housing or personal property." 26/ In view of the circumstances of the losses and decision 7, the Panel decides that the redundancy payments and reimbursements for the loss of tangible property made by the Claimants pursuant to their contractual obligations should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

B. Business transaction or course of dealing

69. The Democratic People's Republic of Korea alleges that a Kuwait City automobile dealer has refused to return the deposit made by the Claimant on a new car prior to Iraq's invasion and occupation of Kuwait. The transaction, as described by the Claimant, shows that, prior to Iraq's invasion and occupation of Kuwait, the automobile dealer undertook an obligation to either deliver a car to the Claimant or return its deposit.

70. While the Panel notes that the invasion and occupation of Kuwait might have given rise to a hardship or force majeure situation that may have excused the automobile dealer from his duty to deliver the new car, the event would not, under principles of international commercial contract law, excuse him from his alternative obligation to return the Claimant's deposit. 27/ Accordingly, the Panel does not consider the automobile dealer's refusal to return the Claimant's deposit to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991). Although the Claimant may have a claim against the automobile dealer, this Commission is not the proper forum for its adjudication.

C. Real property

71. Both Hungarian Claimants and Nigeria seek compensation for the cost of repairing physical damage to their embassy buildings in Kuwait City. Hungary also claims compensation for damage caused to its embassy in Baghdad. The Governing Council has provided that compensatory payments are available for the "loss of or damage to property of a Government". 28/ Accordingly, the Panel decides that damage to embassy property in Iraq and Kuwait should be compensated.

72. The Claimants allege that they discovered the damage to their buildings when their diplomats returned to Baghdad and Kuwait City after the Gulf War ended. They do not proffer any evidence showing who actually caused the damage. Addressing this issue, the Governing Council stated that property that was lost due to the "breakdown of civil order in Kuwait or Iraq" from the period of 2 August 1990 until 2 March 1991 29/ or "because it had been left unguarded ... due to the situation in Iraq and Kuwait" 30/ may be considered as resulting directly from the invasion and occupation.

73. In light of Governing Council decisions 7 and 9 and, given the fact that the Claimants' diplomats, having been evacuated, were unable to protect their real property in Iraq or Kuwait from damage during the invasion and occupation of Kuwait, the Panel considers the causal link between the losses and Iraq's invasion and occupation to have been established in these Claims. Accordingly, the Panel decides that the repair costs incurred by the Claimants should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

74. Denmark alleges that, prior to Iraq's invasion of Kuwait, it prepaid the rent on its embassy premises for the period covering the occupation. The Claimant seeks compensation for the amount of rent it prepaid because it was unable to use the embassy during the period of occupation. The Panel finds that the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation. 31/ In any event, here, the Claimant would have incurred the rental expense regardless of whether Iraq invaded and occupied Kuwait. Consequently, the Panel does not consider the rent the Claimant prepaid for its embassy in Kuwait City to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

75. In its review of the Claims seeking compensation for the loss of real property, the Panel determined that one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Hungarian Ministry of Foreign Affairs Claim relates to the cost of repairing its "security systems in Kuwait and Baghdad". The Claimant states that it does not "attach relevant bills or inventory to [its] claim due to security reasons. At the same time [it] declare[s] hereby that [its] claim is fair and reasonable." In view of the failure to submit any evidence, however limited, in support of this loss, the Panel cannot recommend compensation for the portion of this Claim relating to the security systems.

D. Tangible property

76. Denmark asserts that Iraqi military personnel burgled its embassy on two specific dates during the occupation of Kuwait, stealing office equipment, furniture and a car. As provided in paragraph 34 of decision 7, the Governing Council considered losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. Consequently, the Panel decides that Denmark should be compensated for its loss of tangible property resulting from burglary by Iraqi military personnel to the extent the loss is adequately supported by documentary or other appropriate evidence.

77. The Democratic People's Republic of Korea and the Hungarian Ministry of International Economic Relations claim that office equipment and furniture was damaged or looted from their diplomatic missions in Kuwait during the occupation. New Zealand maintains that an embassy car in Kuwait was lost during this period. Each of these Claimants only discovered the losses following the liberation of Kuwait. For the reasons given with respect to the loss of real property in paragraphs 71 to 73 above, the Panel decides that the Claimants should be compensated for their loss of tangible property to the extent such losses are adequately supported by documentary or other appropriate evidence.

78. The Democratic People's Republic of Korea and Nigeria both evacuated their citizens from Kuwait City to Baghdad by car. The Democratic People's

Republic of Korea states that its cars were confiscated by Iraqi officials. The Claimant's allegations are supported by affidavits from Chinese diplomats who witnessed the event. Accordingly, the Panel decides that the Claimant's loss of its cars should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

79. Following the liberation of Kuwait, Nigeria was able to retrieve several of the cars that it had left in Iraq. The Claimant seeks compensation for the cost of this activity. In decision 9, paragraph 6, the Governing Council recognized that claimants are under a duty to mitigate damages and has instructed the panels not to compensate losses that "could reasonably have been avoided". 32/ It therefore follows that reasonable expenses incurred by claimants in mitigating damages arising out of Iraq's invasion and occupation of Kuwait should be compensable. 33/ In this case, the Panel decides that Nigeria's retrieval of its cars from Baghdad constituted a reasonable step taken in mitigation of its tangible property losses. Accordingly, the Claimant should be compensated for expenses incurred in the process to the extent that they are adequately supported by documentary or other appropriate evidence.

80. In its review of the Claims seeking compensation for the loss of tangible property, the Panel determined that portions of some of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, as one portion of its Claim, Denmark seeks compensation for a car that belonged to its embassy in Kuwait City. The Panel found that the allegations contained in the statement of claim relating to the car did not meet the Commission's particularity requirement for stating a loss. Moreover, the Panel found that the Claimant did not submit appropriate evidence in support of its alleged loss. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the loss of the embassy's car.

81. Second, the Democratic People's Republic of Korea claims in the tangible loss portion of its Claim that its trade office in Kuwait City was robbed by unidentified men the day before it was closed. But the Panel found that, like Denmark's Claim discussed above, the Claimant's statement of claim did not meet the Commission's particularity requirement nor was it supported by any evidence. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the robbery of the trade office.

E. Bank accounts and securities

82. New Zealand claims that, following Iraq's invasion of Kuwait, it was unable to access funds in its bank account in Kuwait. On 15 October 1991, Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") informed the Commission that Kuwait had made "accounts freely available to all holders of bank accounts in Kuwait ... [thus] there will be no need for such persons to file a claim through the U.N. Process." Accordingly, at the Panel's request, on 21

April 1997, the secretariat communicated this information, in writing, to the Claimant through its Permanent Representative in Geneva. 34/

F. Payment or relief to others

83. Germany seeks compensation for assistance payments made in several cases that were handled by one of its social assistance agencies and which it alleges arose out of the Gulf War. One of the cases for which the Claimant seeks compensation involved the payment of assistance from 11 November 1992 to 28 February 1994 to an Iraqi citizen who was granted political asylum in Germany in 1992. In reviewing this case, the Panel notes that relief payments were only initiated by the Claimant in November of 1992, over eight months after the liberation of Kuwait. In the "C" Report it was determined that:

> "[I]n principle, events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with the invasion and occupation of Kuwait. The occurrence of loss, such as serious personal injury or death, outside that time-frame imposes, in general, an extra burden on a claimant to provide an explanation as to why such loss occurring outside this time-period should be considered a direct result of Iraq's invasion and occupation of Kuwait." 35/

84. Given the time at which the payments were made, the Panel determines that the Claimant has not provided an adequate explanation as to why its payment should be considered a direct result of Iraq's invasion and occupation of Kuwait. Moreover, the Panel recognizes that the Governing Council in decision 1, paragraph 17, stated that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". The Panel is concerned that compensation should not be awarded indirectly through a Government to persons who would not be eligible to seek compensation from the Commission for the loss in their own capacity. Based on the foregoing, the Panel cannot recommend that compensation be awarded with respect to the payments made by the Claimant in this case.

85. Another case involved the provision of "general support" to a German family that was given assistance in Germany largely after the liberation of Kuwait. The Panel is of the view that payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait. 36/ On the other hand, discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait. 37/ Accordingly, the Panel decides that ongoing assistance payments such as those made in this case should not be compensated.

86. Two of the cases for which Germany seeks compensation involved the provision of relief during the period of the occupation to students who were cut off from their sources of support in Kuwait and were unable to return home. Another case involved the payment of DM 500 to a Kuwaiti tourist who was stranded at the Köln airport due to Iraq's invasion of Kuwait. The Panel determines that these payments involved the provision of temporary and extraordinary living expenses to persons cut off from their means of support in Kuwait and unable to return as a direct result of Iraq's invasion and occupation of that country. The Panel notes, however, that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed an individual claim in category "C". For example, in the "C" Report, income loss claims were limited to seven times a claimant's monthly salary. 38/ For these reasons, the maximum period for which the Panel would consider recommending compensation for temporary relief payments made by a Government to a person whose source of support in Kuwait or Iraq was cutoff is seven months. Accordingly, the Panel decides that temporary and extraordinary assistance payments such as those made in these three cases should be compensated to the extent that they are adequately supported by documentary or other appropriate evidence.

87. Sri Lanka seeks compensation for the KD 368,000 in stolen banknotes obtained through currency exchanges by its Honorary Consul in Jordan from Sri Lankan refugees fleeing Kuwait. As previously noted, the Governing Council considers losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. 39/

88. In this case, there is a direct link between the theft and circulation of the Central Bank of Kuwait's dinar banknotes by Iraqi officials and the loss incurred by the Claimant. The evidence also demonstrates that the exchanges were made in small amounts in order to provide the Sri Lankan refugees in Jordan with temporary and extraordinary assistance during their evacuation from the region. Finally, the Claim establishes that the notes were exchanged by the Claimant prior to the announcement by the Central Bank of Kuwait, operating in exile, cancelling the stolen currency series. Therefore, the losses incurred by the Claimant were not reasonably avoidable. Consequently, the Panel decides that the Claimant's loss arising out of its receipt of stolen Kuwaiti dinar banknotes should be compensated to the extent it is adequately supported by documentary or other appropriate evidence.

89. In its review of the Claims seeking compensation for the reimbursement of payment or relief to others, the Panel determined that portions of some Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, the Hungarian Ministry of Foreign Affairs claims to have paid relief to staff members of its embassies in Kuwait and Baghdad following their evacuation from those

countries. The statement of claim does not explain any of the circumstances under which the payments were made. The Panel found that this portion of the Claim did not meet the Commission's particularity requirement with respect to its statement of claim and therefore cannot recommend compensation for this portion of the Claim.

90. Second, the Netherlands claims that it instituted a "financial assistance scheme" for its diplomats and dependents who were evacuated from the Middle East or who were unable to return to their duty posts following the invasion. However, the documents submitted by the Claimant in support of this loss, both in its original submission and in its response to the Panel's Procedural Order, were in Dutch and were not accompanied by an English translation as required by article 6 of the Rules. Accordingly, the Panel could not consider the evidence and therefore cannot recommend that compensation be awarded for this alleged loss.

G. Evacuation costs

91. Several Claimants, including the Democratic People's Republic of Korea, Denmark, the Hungarian Ministry of Foreign Affairs, the Netherlands, New Zealand and Nigeria, seek compensation for the costs incurred in evacuating their citizens and other nationals from Kuwait and Iraq following Iraq's invasion and occupation of Kuwait. The Governing Council considered such costs to be a direct loss, provided that they were incurred by "a Government in evacuating its nationals from Iraq or Kuwait." 40/ Consequently, the Panel decides that costs incurred by Governments in evacuating their citizens from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

92. Although the costs incurred by Governments in the evacuation of other nationals, i.e. citizens of countries different from the evacuating Government, from Iraq or Kuwait are not expressly mentioned in decision 7, the Panel understands that the Governing Council intended that such costs also be considered to be direct losses. This understanding is based upon, inter alia, the fact that, after issuing decision 7, the Governing Council approved the "F" Claim Form, which classifies "evacuation costs (of citizens or other nationals)" as a type of loss that may be claimed. Accordingly, the Panel decides that the costs incurred by Governments in evacuating other nationals from Iraq and Kuwait should be compensable on the same basis as those costs incurred by Governments in evacuating their own citizens.

93. Denmark also seeks compensation for the costs incurred in evacuating its citizens (primarily diplomats) from countries other than Iraq and Kuwait. However, only costs incurred in evacuating citizens from "Iraq or Kuwait", and not from other countries, are mentioned as being compensable in decision 7. The Governing Council did, however, consider any "loss suffered as a result of ... [m]ilitary operations or threat of military

action by either side during the period 2 August 1990 to 2 March 1991" to be a "direct loss, damage or injury". 41/

94. The Panel decides that this provision of decision 7 can serve as the basis for claims in respect of evacuation from other countries provided a claimant can establish a direct causal link between its loss and Iraq's invasion and occupation of Kuwait. Such a link can be shown where actual military operations were conducted against a country from which persons were evacuated or where an actual - as opposed to speculative - threat of military action existed against a country from which an evacuation took place. In these circumstances, the Panel agrees with the holding of the "C" Panel, that "a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated" in order to establish the necessary causal link between the loss and the invasion and occupation of Kuwait. 42/

95. In considering this issue, the Panel, pursuant to article 36(b) of the Rules, requested information from various non-claimant Governments regarding the measures they took with respect to the evacuation of citizens from other Middle Eastern countries during the relevant period. The Panel also requested that the secretariat research the range and use of Iraqi SCUD missiles during the period of Iraq's invasion and occupation of Kuwait and the location of any military actions that were conducted by either side in countries other than Iraq and Kuwait.

96. Based on its investigation, the Panel found that "military operations or [the] threat of military action" were directed against Saudi Arabia and Israel in addition to Kuwait and Iraq. At one point, Iraqi ground forces actually crossed the Saudi Arabian border and engaged the Saudi Arabian and Allied Coalition armed forces in combat. Additionally, Saudi Arabia and Israel were threatened with and subjected to a series of SCUD missile attacks launched by Iraq. Consequently, the Panel decides that the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait. For these reasons, the Panel decides that the portion of Denmark's Claim which relates to the cost of evacuating citizens from Saudi Arabia and Israel should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

97. In its review of the Claims seeking compensation for the reimbursement of evacuation expenses, the Panel determined that a portion of one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Democratic People's Republic of Korea states that it "obtained through [an] unofficial channel" "exit permission" to leave Iraq by paying a fee. The Claimant seeks compensation for the amount it paid for such permission. In decision 7, paragraph 34(c), the Governing Council considered that "any loss suffered as a result of ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the

invasion and occupation" are compensable. However, the Claimant has not made a showing that its loss is covered by this provision of decision 7. For example, the Claimant does not identify the "channel" through which the payment was made nor does it allege that the payment was made under compulsion. Consequently, the Panel cannot recommend that compensation be awarded for this claimed loss.

H. Public service expenditures

98. Nigeria seeks compensation for the cost of operating a temporary embassy in Abu Dhabi following the closure of its embassy in Kuwait City. The Panel considers that, even if Nigeria would not otherwise have opened an embassy in Abu Dhabi, its voluntary and independent decision to operate a diplomatic mission there during the period of the occupation of Kuwait has not resulted in a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

V. OTHER ISSUES

A. Currency exchange rate

99. While several Claimants stated their Claims or incurred losses in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses or Claims expressed in other currencies.

100. Courts or tribunals generally use one of three dates in determining the proper rate of exchange: the date of loss; the date of judgment; or the date of payment in execution of the judgment. 43/ The Panel believes that, according to general principles of international law, applying the currency exchange rate as of the date of the loss is the best method of calculating the rate of exchange for the present Claims. In discussing the application of this method in international practice, the "C" Panel observed that "'[n]ormally the value of a claim is computed in the foreign currency at the time of loss or damage and then converted into the currency of the claimant's country using the rate of exchange available at the time the claim arose'". 44/

101. With respect to the nine Claims that are the subject of this report, the Panel finds that the alleged losses occurred during the period of Iraq's occupation of Kuwait from 2 August 1990 through 2 March 1991. It is impractical for the Panel to attempt to determine with precision the date of each individual loss that underlies the Claims. The Panel has observed, however, that the losses appear to have arisen fairly regularly throughout the period of the occupation. Because the losses occurred over a fixed period of time and consisted of numerous individual costs or property losses, the Panel uses 16 November 1990, the midpoint of the occupation period, as the date of loss for purposes of the application of currency exchange rates. 45/

102. Due to Iraq's invasion and occupation of Kuwait, there was a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation. The Panel, therefore, uses the exchange rate for the Kuwaiti dinar that prevailed immediately before the invasion for this purpose. 46/

B. Interest

103. The Governing Council in decision 16 decided that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". 47/ However, the Governing Council provided in decision 16 that the "methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time [and that] [i]nterest will be paid [only] after the principal amount of the awards". 48/ Accordingly, the only decision that the Panel must make with respect to the issue of interest is the date when the losses alleged in these Claims occurred.

104. For the same reasons that the Panel uses 16 November 1990 as the date of loss for the purpose of calculating currency exchange rates, it determines that the same date should be used for purposes of interest calculation. 49/ In view of the foregoing, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

VI. QUANTIFICATION OF THE CLAIMS

105. As discussed above, the Panel decided that certain loss elements within the Claims should not be compensated either because they failed to meet the Commission's pleading and evidentiary standard or because they failed to meet the directness requirement established in resolution 687 (1991).

106. Concerning the quantification of loss elements that the Panel decided were compensable, the Panel, assisted by the secretariat, undertook a careful examination of the statements of claim and the evidence underlying each Claim. In addition to verifying that the stated losses did occur, the Panel considered the reasonableness of the Claimants' actions and the amounts claimed. For example, in the evacuation context, one Claimant purchased gas masks for its citizens to carry on the overland journey from Kuwait to Jordan. The Panel determined that this expense was reasonable and it was allowed. The same Claimant also submitted invoices for first class air travel for some of its evacuees. The Panel determined that such an expense was unreasonable and only allowed the cost of economy class travel.

107. Furthermore, the Panel was assisted by loss adjusters with experience in handling major catastrophic events at the international level. 50/ Under the Panel's supervision and guidance, the loss adjusters reviewed the information and evidence submitted by the Claimants and, in a number of

cases, advised the Panel regarding the quantification of the Claims. Such advice was generally based on the loss adjusters' comparison of the level and type of evidence submitted by the Claimants with the level and type of evidence that claimants usually are able to produce to justify losses arising out of catastrophic events such as hurricanes or floods in the international insurance context. The experts also discussed general loss adjustment principles such as depreciation and betterment with the Panel in the context of specific Claims. The Panel's use of experts in this manner is consistent with the established practice of the Commission 51/ and other international claims commissions and tribunals. 52/

108. Based upon its review and evaluation of the Claims and the advice of the loss adjusters, the Panel makes the following determinations with regard to the quantification of the Claims, which are summarized by loss classification in the table below. The amounts are stated in United States dollars. These amounts have been rounded to the nearest dollar.

QUANTIFICATION BY LOSS ELEMENT									
Claimant	Contract	Business transaction or course of dealing	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Total amount recommended
Democratic People's Republic of Korea		0		49,782			69,968		118,750
Denmark			0	30,151			566,606		596,757
Germany						5,943			5,943
Hungarian Ministry of Foreign Affairs	21,067		17,488			0	92,084		130,639
Hungarian Ministry of International Economic Relations			10,332	15,629					25,961
The Netherlands	103,367					0	1,007		104,374
New Zealand	21,928			10,517	0		28,388		60,833
Nigeria			9,468	12,074			51,949	0	73,491
Sri Lanka						1,103,295			1,103,295
Total									2,220,043

VII. RECOMMENDATIONS

109. Based on the foregoing, the Panel recommends that the following amounts should be paid in compensation for losses incurred by the claimant Governments as a direct result of Iraq's invasion and occupation of Kuwait:

(a) The Democratic People's Republic of Korea for its State Commission of External Economic Affairs: US$118,750;

(b) The Kingdom of Denmark for its Ministry of Foreign Affairs: US$596,757;

(c) The Federal Republic of Germany for the North Rhine-Westphalia Ministry of Employment, Health and Social Affairs: US$5,943;

(d) The Republic of Hungary for its Ministry of Foreign Affairs: US$130,639;

(e) The Republic of Hungary for its Ministry of International Economic Relations: US$25,961;

(f) The Kingdom of the Netherlands for its Ministry of Foreign Affairs: US$104,374;

(g) New Zealand for its Ministry of Foreign Affairs and Trade: US$60,833;

(h) The Federal Republic of Nigeria for the Nigerian Embassy in Kuwait: US$73,491, and

(I) The Democratic Socialist Republic of Sri Lanka for its Ministry of Foreign Affairs: US$1,103,295.

Geneva, 23 September 1997

(Signed) Mr. Bjørn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ See Security Council resolution 692 (1991), para. 3.

2/ This report adopts the currency abbreviations contained in Terminology Bulletin No. 343, Currency Units (United Nations Publication, Sales No. A/C/E/F/R/S.91.I.16)(ST/CS/SER.F/343).

3/ "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules for Claims Procedure (Report No. 15)" (S/AC.26/1996/R.2), and "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules For Claims Procedure (Report No. 16)" (S/AC.26/1996/R.16).

4/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

5/ The approximate amounts claimed are stated in United States dollars, although many of the Claims were originally stated in other currencies.

6/ Category "C" claims are claims of individuals for damages up to US$100,000. Category "D" claims are claims of individuals for damages above US$100,000.

7/ These requests were directed to Denmark, Germany, Hungary, the Netherlands and Sri Lanka.

8/ As a result of its investigation, the Panel concluded that two of the persons reimbursed by the Netherlands for the loss of personal property, two of the persons given assistance by Germany and two of the Ministry of Foreign Affairs employees who received relief from Hungary had filed claims for the same losses in category "C". This information was confirmed by a review of the claim documents filed by the individual claimants in category "C" and the information contained in the Claimants' responses to the Procedural Orders. Consequently, the Panel cannot recommend that compensation be paid to the Claimants for these losses in the present proceedings.

9/ Governing Council decision 7, "Criteria for additional Categories of Claims" (S/AC.26/1991/7/Rev.1).

10/ Given that there are two Hungarian claims covered by this report, they will be referred to, where necessary, by the full names of the Ministries for whom the Claims were submitted in order to avoid confusion.

11/ Although the Panel has read portions of the Kuwait Central Bank claim as part of its investigations here, that claim is not currently under formal review by the Panel.

12/ See Security Council resolution 686 (1991), fourth paragraph of the preamble. This resolution specifically refers to Security Council resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 669 (1990), 670 (1990), 674 (1990), 677 (1990) and 678 (1990).

13/ See Security Council resolution 674 (1990), para. 8.

14/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim" (S/AC.26/1996/5/Annex) (the "WBC Claim Report"), para. 67. The Panel found that the Security Council had also acted under Chapter VII when it passed

resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991).

15/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3) (the "'C' Report") p. 9. See also WBC Claim Report, para. 68 (the Panel held that "the issue of Iraq's liability has been resolved by the Security Council" and thus constitutes part of the law applicable before the Commission).

16/ Governing Council decision 7, para. 34.

17/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), para. 13.

18/ See, for example, WBC Claim Report, para. 71.

19/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause" (S/AC.26/1992/15), para. 5.

20/ "United Nations Compensation Commission Claim Form for Governments and International Organizations ('F Form')" (the "'F' Claim Form"), para. 4. Indeed, on 16 October 1992, the Commission's Executive Secretary circulated a letter to the Permanent Representatives of United Nations Member States which restated the pleading and evidentiary standard set forth in the Rules and on the "F" Claim Form (S/AC.26/1992/None No.55).

21/ See also "F" Claim Form, paragraph 4, which specifically instructs claimants as to the evidentiary requirement set forth in article 35 of the Rules.

22/ See, for example, M & M Productions, Inc. v. Iran, Iran-United States Claims Tribunal Reports, (Cambridge, Grotius) ("Iran-U.S. C.T.R."), vol. 6 (1984), p. 125 et seq., at p. 127. (Claim dismissed because "the pleadings and evidence in the case ... fail to establish to the Tribunal's satisfaction any substantive basis for Claimant's claim against Respondent".) Accord Karim-Panahi v. United States of America, Iran-U.S. C.T.R., vol. 28 (1992), p. 225 et seq., at p. 228. (Claim dismissed because "[a]part from generalized allegations of the United States involvement, the Claimant's statements remain so vague and devoid of any supporting evidence as to fail to state a cognizable claim or cause of action".) See also Cyprus Petroleum Ltd. v. Iran, Iran-U.S. C.T.R., vol. 11 (1986), p. 70 et seq., at p. 71. (Claim dismissed because "[n]either in the Statement of Claim nor in subsequent filings does the Claimant detail the substance of its allegations or provide any evidence to support them".)

23/ Compare UNIDROIT Principles of International Commercial Contracts ("UNIDROIT Principles"), art. 7.4.3(3). ("Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.")

24/ In his report to the Security Council regarding the implementation of resolution 687 (1991) and the establishment of the Commission, the Secretary-General proposed that the Commission operate as follows:

> "The Commission is not a court or an arbitral tribunal before which parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity,

evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element."

"Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)" (S/22559) ("Secretary-General's report"), para. 20. This proposal formed part of section II of the Secretary-General's report, which the Governing Council was directed to take into account when implementing the provisions of section E of Security Council resolution 687 (1991). See Security Council resolution 692 (1991), para. 5.

25/ Governing Council decision 7, para. 36.

26/ Governing Council decision 1, "Criteria for Expedited Processing of Claims" (S/AC.26/1991/1), para. 14. See also Marjorie M. Whiteman, Damages in International Law, (Washington, United States Government Printing Office, 1943) ("Whiteman"), vol. 3, p. 1781. (The Commission on Indemnities, constituted after the I-ho T'uan chi yi [referred to in the Whiteman text as the "Boxer Uprising"] in June 1900, "considers that the cases specified below constitute an immediate and direct consequence of the events of 1900 ... [loss of] [f]urniture and private property belonging to the staff of the legations and consulates".) (Quoting the Commissioner of the United States to China.)

27/ See, for example, UNIDROIT Principles, arts. 7.1.7, 7.3.5, 7.3.6 and 7.4.9.

28/ Governing Council decision 7, para. 36. See also Whiteman, op. cit., p. 1781. (The I-ho T'uan chi yi Commission on Indemnities considered that, with respect to Governments, the following losses were direct: "[b]uildings of legations and consulates destroyed or damaged, taking into account new requirements, being an immediate and direct consequence of the above events, inclusive of ... repairs ... Furniture and all property belonging to the Government.'") (Quoting the Commissioner of the United States to China.)

29/ Governing Council decision 7, para. 34(d).

30/ Governing Council decision 9, para. 13. See also Whiteman, op. cit., p. 1780. (In discussing what losses incurred by German nationals were considered to be direct in light of the arbitrator's decision that military action taken by the United States and Great Britain in Samoa was unwarranted, the American and British Commissioners submitted the following in the Commission set up pursuant to the Convention of November 7, 1899: "'[i]t may be admitted that where the occupants of a house were obliged to flee for refuge when the bombardment began, and were unable, from fear of personal injury or other causes, to return to protect their property, and it was looted by the natives in their absence, the damage thus resulting may be said to be approximately caused by the military operations'".) (Quoting "Joint Report No. II of August 12, 1904".)

31/ For example, article 45 of the 1961 Vienna Convention on Diplomatic Relations (United Nations, Treaty Series, vol. 500, p. 95), merely provides that, in the case of a permanent or temporary closure of a diplomatic mission, "the receiving State must, even in the case of armed conflict, respect and protect the premises of the mission, together with its property and archives".

32/ This is a general principle of law. Compare UNIDROIT Principles, art. 7.4.8(1). ("The nonperforming party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.")

33/ Ibid., art. 7.4.8(2). ("The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.") See also, for example, Watkins-Johnson Company and Watkins-Johnson Limited. v. Iran, Iran-U.S. C.T.R. , vol. 22 (1989), p. 218 et seq., at p. 245, where, having held that the claimant's right to sell equipment in mitigation of its damages was consistent with international law, the Tribunal held that the claimant was "entitled to deduct from the proceeds reasonable expenses incurred in carrying out the sale".

34/ The funds held by the Claimant in its Kuwaiti bank account were denominated in Iraqi dinars as opposed to Kuwaiti dinars. As a result of the severe decline in the value of the Iraqi dinar following Iraq's invasion and occupation of Kuwait, the funds in the Claimant's account were worth far less when it submitted its Claim than they were on the day of the invasion, the date from which the Claimant was presumably unable to obtain access to the account. In its Claim, the Claimant merely sought compensation for the funds in the account, which it alleged was blocked. It did not allege a loss based on the diminution in value of the Iraqi dinars held in the account during the relevant period nor did it demonstrate that such a diminution was a direct result of Iraq's invasion and occupation of Kuwait.

35/ "C" Report, p. 12. Accord "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims)" (S/AC.26/1994/1) (the "'B' Report"), pp. 12-13.

36/ Compare Whiteman, op. cit., pp. 1810-1811. (In a claim presented to the Government of China arising out of the Szechuan riots in May and June 1895, the United States sought compensation for the "'expenses incidently and necessarily incurred by our missionaries in removing to a place of safety, and while residing there [for six months] through enforced inability to return to their residences, are proper items to be embodied in the claims.' The items were reimbursed.") (Quoting Secretary Olney.)

37/ Compare Whiteman, op. cit., p. 1802. (In a claim presented by the United States to the United States-German Mixed Claims Commission arising out of the sinking of the Lusitania, the claimant sought compensation because "his living expenses were increased by reason of the fact that [his brother who died in the sinking] no longer shared and divided the expense of a room with him and ... that the burden of supporting, maintaining and educating his sister" now fell solely on him. "Umpire Parker disallowed the claim on the ground that the damages, if any, suffered by [the claimant] were 'too remote in legal contemplation to form the basis of an award.'"). See also pp. 1782-1783. (The I-ho T'uan chi yi Commission on Indemnities considered that with respect to private individuals "travelling expenses other than journeys to the nearest place of safety" should "not be considered an immediate and direct consequence of the events of 1900.") (Quoting the Commissioner of the United States to China.)

38/ "C" Report, pp. 192-93.

39/ Governing Council decision 7, para. 34(c).

40/ Ibid., para. 36.

41/ Ibid., para. 34(a).

42/ "C" Report, p. 13.

43/ See, for example, "C" Report, p. 30.

44/ Ibid., (Citing Richard B. Lillich, International Claims: Postwar British Practice, (Syracuse, Syracuse University Press, 1967), p.127. This method has been applied in cases before the Iran-United States Claims Tribunal. See, for example, Blount Brothers Corporation v. Iran, Iran-U.S. C.T.R., vol. 10 (1986), p. 56 et seq., at p. 78.

45/ Compare WBC Claim Report, para. 66.

46/ See, for example, "C" Report, p. 31. The exchange rates used for 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for the other currencies are the average monthly rates for such currencies as reported in the United Nations Monthly Bulletin of Statistics, vol. XLV, No. 4, April 1991 (ST/ESA/STAT/SER.1/220). The exchange rate adopted by the Panel for the Kuwaiti dinar will not, however, be applied to the Sri Lankan Ministry of Foreign Affairs Claim. In that Claim, the Claimant alleges that it exchanged Kuwaiti dinars for United States dollars at a 3:1 rate. That rate is less than the rate of 3.46:1 prevailing on 1 August 1990. Thus, the application of the pre-invasion rate to the loss would have resulted in an unjustified windfall for the Claimant.

47/ Governing Council decision 16, "Awards of Interest" (S/AC.26/1992/16), para. 1.

48/ Ibid., paras. 2-3.

49/ See, for example, WBC Claim Report, paras. 229-230.

50/ Article 36 of the Rules states that the panels may request "expert advice, as necessary".

51/ See, for example, WBC Claim Report, paras. 9-10. ("The secretariat also retained the services of an accounting consultant to assist the secretariat and the Panel in reviewing the accounting materials submitted by the Claimant and in drafting the interrogatories ... The accounting consultant also participated as a member of the verification team in the performance of the on-site inspection in Kuwait and in the review of the [Touche Ross] working papers.") See also "B" Report, p. 9. (The secretariat retained the Secretary-General of the International Society of Disaster Medicine to preliminarily examine the claims. Later, the same expert assisted the Category "B" Panel with its review of the claims.) "C" Report, p. 271. (Experts in medicine, psychiatry, labour law and mass litigation assisted the Category "C" Panel with its review of the claims.)

52/ See generally Gillian White, The Use of Experts by International Tribunals, (Syracuse, Syracuse University Press, 1965), p. 143. See also Starrett Housing Corp. v. Iran, Iran-U.S. C.T.R., vol. 16 (1987), p. 112 et seq., at pp. 198-199.

Annex II

Decision concerning part one of the first instalment of claims by Governments (category B claims) taken by the Governing Council of the United Nations Compensation Commission at its 73rd meeting, held on 17 December 1997 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the first report of the Panel of Commissioners appointed to review claims by Governments and international organizations (category "F" claims), covering eleven claims,

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning nine claims covered in the report. The amounts per Government, as noted in paragraph 109 of the report, are as follows:

Government	Amount of Compensation Recommended (US$)
Democratic People's Republic of Korea	118,750.00
Denmark	590,757.00
Germany	5,943.00

* Previously issued as S/AC.26/Dec/45 (1997).

Government	Amount of Compensation Recommended (US$)
Hungary (2 claims)	156,600.00
Netherlands	104,374.00
New Zealand	60,833.00
Nigeria	73,491.00
Sri Lanka	1,103,295.00
Total	2,220,043.00

3. Reaffirms that when funds become available payments shall be made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of Decision 18 [S/AC.26/Dec.18 (1994)], Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for two claims referred to in paragraph five of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, the Government of the Republic of Iraq and to each respective Government.

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15 January 1998

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NOTE BY THE SECRETARY-GENERAL

The Secretary-General has the honour to transmit to the members of the Security Council the attached letter dated 14 January 1998, which he has received from the Director General of the International Atomic Energy Agency.

98-00797 (E) 150198

/...

Annex

Letter dated 14 January 1998 from the Director General of the International Atomic Energy Agency addressed to the Secretary-General

Further to my letter dated 3 December 1997, I attach a report on the International Atomic Energy Agency technical team visit to Iraq, which took place from 19 to 21 December 1997.

I should be grateful if you would bring the report to the attention of the Security Council.

(Signed) Mohamed ELBARADEI

Appendix

Report on the International Atomic Energy Agency technical team visit to Iraq, 19 to 21 December 1997

A. Introduction

1. Further to the letter dated 3 December 1997 from the Director General of the International Atomic Energy Agency (IAEA) addressed to the Secretary-General (S/1997/950), an IAEA team, composed of six technical specialists, headed by the leader of the Action Team, visited Iraq from 19 to 21 December 1997. Five discussion sessions were held during the visit. In the first four sessions the Iraqi counterpart was led by Dr. Jaffar Dhia Jaffar, a Presidential adviser and former head of Iraq's clandestine nuclear programme (PC-3). At the concluding session the Iraqi counterpart was joined by Deputy Prime Minister Tariq Aziz and by the Minister of Culture and Information, the Under-Secretary, Ministry of Foreign Affairs, the Chairman of Iraq's Atomic Energy Commission (IAEC) and other senior Iraqi officials.

2. The main purpose of the visit was to clarify the five matters identified in paragraph 75 of document S/1997/779, with a view to providing further assurance that the technically coherent picture of Iraq's clandestine nuclear programme is comprehensive and that the ongoing monitoring and verification activities of IAEA are tailored appropriately. The results of the discussions with the Iraqi counterpart on those matters are summarized in section B of the present report.

3. The team took the opportunity to clarify further the nuclear weapon design options that were being pursued by Iraq until the middle of January 1991. Discussions were also held regarding a document that had been provided by the Iraqi counterpart describing the Iraqi nuclear team, whose role was to interact with IAEA inspection teams. The results of those discussions are summarized in section C.

4. The team also raised with the Iraqi counterpart several ongoing monitoring and verification matters, as well as the use of fixed-wing aircraft within Iraq. The related discussions are summarized in section D.

B. The five matters identified in paragraph 75 of document S/1997/779

1. Iraq's post-war procurement procedures

5. This matter had been discussed on a number of occasions during 1997 in order to gain an understanding of the procedures used by Iraq for the procurement of equipment and materials. Such an understanding would contribute to the ability of IAEA to identify actions that might indicate Iraq's clandestine procurement of proscribed or dual-use equipment and materials. The Iraqi counterpart had provided, by letter of 13 October 1997, documentation describing the dissolution on 21 August 1995 of 9 of the 11 Iraqi companies involved in post-war procurement activities for the Military Industrialization Corporation (MIC). The same letter had also enclosed documentation regarding

the MIC procurement procedures that govern the activities of the two remaining companies. By letter of 17 December 1997, the Iraqi counterpart responded to questions that had been posed by IAEA regarding particular transactions.

2. Summary of technical achievements of Iraq's clandestine nuclear programme

6. The utility to IAEA of a summary of technical achievements of Iraq's clandestine nuclear programme was reviewed with the Iraqi counterpart in the context of optimization of the ongoing monitoring and verification activities of IAEA. In the course of the discussion, it was agreed that IAEA would provide a specification of the required scope and content of the proposed summary, on the basis of which the Iraqi counterpart undertook to prepare a working draft. IAEA provided the specification during the third discussion session.

7. It was further agreed that representatives of IAEA and the Iraqi counterpart would meet to review the draft and produce a final document.

3. Offers of external assistance to Iraq's clandestine nuclear programme

8. The matter of solicited or unsolicited offers of external assistance to Iraq's clandestine nuclear programme and the related role of Iraq's General Intelligence Service (Mukhabarat) had been raised by IAEA during its technical team visits in May and July 1997. During those visits, IAEA had encouraged the Iraqi counterpart to recount all such offers. The instances recounted by the Iraqi counterpart were few and did not include a case which, in the judgement of IAEA, should have been mentioned. In order to proceed further, IAEA, in October 1997, gave the counterpart correspondence of Iraqi origin related to the case in question.

9. The December discussions focused on that specific case which had involved an unsolicited offer of assistance, in October 1990, made by a foreign national. The foreign national had claimed to be able to supply nuclear weapon design drawings, to facilitate the procurement of the equipment required and to provide technological assistance. The Iraqi counterpart explained that the offer had been made, in person, by the foreign national (whose identity was supplied to IAEA by the Iraqi counterpart) in Baghdad to the Director General of the Technical Consultation Corporation (TCC) - a procurement agency of the Mukhabarat.

10. All of the Iraqi principals involved, both TCC and former PC-3 personnel, were interviewed by the IAEA technical team. No indications were obtained to contradict the statement by the counterpart that Iraq had taken no action to pursue this offer. The Iraqi counterpart maintained that it had not followed up on any offers of assistance to the clandestine nuclear programme. Furthermore, the Iraqi counterpart restated its opinion that the risk of exposure through a "sting operation" far outweighed any benefit that might result from such offers. Nonetheless, the Iraqi counterpart's earlier claimed inability to recall this particular offer or, indeed, to recall its interaction with the Mukhabarat, and

its willingness to respond only to specific cases supported by documentation, appear to be inconsistent with a policy of transparency.

4. Actions attributed to the late Lieutenant-General Hussein Kamel

11. During the discussion of this matter, IAEA explained that there was no verifiable evidence available to distinguish between the actions attributed by Iraq to the late Lt.-Gen. Hussein Kamel, a senior Iraqi Government official, and those of the Government itself. In that context, Iraq's statements that its clandestine nuclear programme had effectively ceased in January 1991 and had been abandoned in April 1991 are inconsistent with actions taken to conceal and retain programme-related documentation, materials and equipment, until at least August 1995.

12. Deputy Prime Minister Tariq Aziz restated Iraq's position that the late Lt.-Gen. Hussein Kamel had acted independently, without government knowledge or authority and contrary to government policy. He reaffirmed that the Iraqi Government had no knowledge of the motivation behind the actions but accepted that the motivation could have been linked to Hussein Kamel's ambition to reconstitute a nuclear weapons programme.

5. The governmental committee

13. The existence of a so-called governmental committee was declared by the Iraqi counterpart in a presentation it had made in May 1997. The presentation was one of a series that had been requested by IAEA in an attempt to acquire information supporting Iraq's declaration that its clandestine nuclear programme had effectively terminated in January 1991 and had been abandoned at the time of Iraq's acceptance of Security Council resolution 687 (1991) in April 1991. IAEA had immediately asked for clarification of the function and duration of authority of the so-called governmental committee since the function and duration of authority of such a committee would doubtless have a bearing on Iraq's declared abandonment of its clandestine nuclear programme. The Iraqi counterpart had initially declined to respond and later stated that no such committee had existed and that the reference to such a committee in the presentation had been incorrect.

14. In the discussion, IAEA explained that since the existence of the governmental committee had been originally volunteered by the Iraqi counterpart, the manner in which its existence was subsequently retracted was a matter of concern.

15. Responding to this concern, Deputy Prime Minister Tariq Aziz reiterated Iraq's position that no such committee had existed. He explained that when the responsibility for dealing with the United Nations on matters related to resolution 687 (1991) had been assigned to him, he had sought, as necessary, the advice of his government colleagues and of appropriate technical personnel. In the case of the nuclear programme, the technical advisers would have included, as appropriate, the deputy ministers of the Military Industrialization Corporation, the Chairman of IAEC, the head of PC-3 and their senior technical staff.

C. Additional matters related to Iraq's clandestine nuclear programme

1. The Iraqi nuclear team

16. Earlier in 1997, the Iraqi counterpart had given IAEA a document, dated 16 August 1991, which formalized the composition and terms of reference of the Iraqi nuclear team. This team had been brought together, around May 1991, to interact, as a declared entity, with IAEA inspection teams. The Iraqi counterpart was requested to provide IAEA with access to the reports prepared by the Iraqi nuclear team under its documented terms of reference. The Iraqi counterpart undertook to locate the reports and to make them available to IAEA.

2. Nuclear weapon design options in January 1991

17. As mentioned in paragraph 29 of document S/1997/779, the Iraqi counterpart had given IAEA documents indicating the status of Iraq's ability to produce explosive lenses at the beginning of 1991, the most significant of which were the minutes of a meeting of 12 January 1991. In discussing the documents, IAEA observed that the minutes in question indicated that a significant decision had been taken regarding the dimensions of the explosive lens of choice. IAEA suggested that this decision strongly indicated that similar decisions had been taken regarding the design of the weapon internals.

18. The Iraqi counterpart agreed that the size of the explosive lenses had been fixed at the meeting of 12 January 1991. It asserted, however, that the decision had been reached empirically and had been most strongly influenced by the restriction on the external diameter of the nuclear weapon imposed by the most appropriate missile delivery vehicle available at that time. The Iraqi counterpart insisted that no decision had been made with respect to the design of the weapon internals and, as supported by other information it had earlier provided to IAEA, that no practical experiments had been made to support any particular design concept.

19. The Iraqi counterpart continues to maintain that, despite the increased urgency imposed by the so-called "crash programme", it had not yet identified design options beyond those preliminary concepts described in the last version of the PC-3 Group Four report entitled "Basic design report of the implosion device", dated 14 July 1990. It further maintains that no experimental programme had been established through which to validate possible options identified by computation.

3. The "full, final and complete declaration"

20. The Iraqi counterpart agreed to produce a consolidated edition of its "full, final and complete declaration" (FFCD) incorporating the agreed revisions and additions to the text of the September 1996 version (FFCD-F), as discussed with IAEA in February, May and July 1997.

D. Other matters

1. Use of fixed-wing aircraft within Iraq

21. IAEA explained that the need to use fixed-wing aircraft within Iraq was twofold. First, there was a purely logistical need in order to transport personnel and road vehicles to locations remote from Baghdad to provide independent ground transportation for monitoring teams and thus optimize their freedom of surface movement. Secondly, there was a need to use fixed-wing aircraft in conjunction with ongoing monitoring and verification technical activities, in particular to improve the efficiency of aerial radiation surveys. IAEA explained that although the use of relatively slow-moving helicopter platforms provided the best sensitivity, the use of higher-speed fixed-wing aircraft would greatly increase the coverage.

22. It was agreed that IAEA would specify a campaign of aerial radiation survey using a fixed-wing platform and that the Iraqi counterpart would seek the necessary clearances from the appropriate government authorities.

23. Subsequently, Deputy Prime Minister Tariq Aziz stated that there would be no objection to IAEA's use of fixed-wing aircraft for technical monitoring activities, such as radiation surveys. He nevertheless asked IAEA to consider using Iraqi aircraft where feasible. IAEA stated that it would expect to use non-Iraqi aircraft in the first instance but was prepared to consider the feasibility of using Iraqi aircraft for later campaigns. IAEA also stated that it would pursue, in conjunction with the Special Commission, the use of fixed-wing aircraft for logistical purposes.

2. Ongoing monitoring and verification

24. A number of ongoing monitoring and verification matters were discussed with the Iraqi counterpart. These matters included helicopter safety (in particular the behaviour of Iraqi "helicopter-minders"), the access authority of National Monitoring Directorate personnel, the legislation required under the ongoing monitoring and verification plan and the correctness of the nuclear material accountancy data included in declarations submitted by Iraq in accordance with the plan. No points of contention arose during these discussions and matters arising will be followed up in the course of the ongoing monitoring and verification activities of IAEA.

E. Summary

25. The information provided by Iraq in respect of its post-war procurement procedures will contribute to the ability of IAEA to identify actions that might indicate Iraq's clandestine procurement of proscribed or dual-use equipment and materials. Future information requirements in this regard will be pursued in the course of ongoing monitoring and verification activities.

26. The specification of the scope and content for the summary of the technical achievements of Iraq's clandestine nuclear programme that IAEA provided to the Iraqi counterpart should facilitate the production by Iraq of a document that

will provide further assurance that the technically coherent picture of Iraq's clandestine nuclear programme is comprehensive. It will also assist IAEA in optimizing its ongoing monitoring and verification activities.

27. The specific instance of external assistance offered to Iraq's clandestine nuclear programme, reported in section B.3 above, has been extensively discussed with the Iraqi counterpart. It has not been possible to confirm independently the veracity of Iraq's statement that it took no action to follow up on that offer or, indeed, on any similar offer. At this point in time, IAEA holds no information on which to base further investigation of this matter with the Iraqi counterpart. Iraq's direct acquisition of weapon-usable nuclear material or nuclear weapon-related technology will, however, continue to be a matter of major concern to IAEA, and high priority will continue to be given to the investigation of any indication of such acquisition.

28. Although the related matters of the existence of the so-called governmental committee and the motives behind the actions attributed to the late Lt.-Gen. Hussein Kamel have been investigated by IAEA to the extent feasible, it has not been possible to confirm independently the veracity of Iraq's statements in those respects. There is, at this point in time, no information available to IAEA on which to base further investigation.

29. Although it is difficult to understand the apparent lack of focus at such a critical stage in Iraq's weaponization development, IAEA has no information that contradicts Iraq's statement that it had never identified nuclear weapon design options beyond those preliminary concepts described in its report entitled "Basic design report of the implosion device" dated 14 July 1990. Nonetheless, the IAEA ongoing monitoring and verification plan is predicated on the assumption that Iraq retains the technical capability to exploit, for nuclear weapons purposes, any relevant material to which it might gain access.

30. Iraq's cooperation with respect to the use of fixed-wing aircraft in conjunction with technical activities will contribute to the efficiency and effectiveness of the IAEA ongoing monitoring and verification plan. In this regard, IAEA intends to implement, in the near future, an aerial radiation survey campaign in Iraq, using a fixed-wing platform. For future campaigns, IAEA will examine the feasibility of using Iraqi aircraft. IAEA will pursue, through the Special Commission, its requirements to use fixed-wing aircraft within Iraq for logistical purposes.

31. As recorded in document S/1997/779, IAEA is currently focusing most of its resources on the implementation and strengthening of its ongoing monitoring and verification plan. However, IAEA will continue to exercise its right to investigate any aspect of Iraq's clandestine nuclear programme, in particular through the follow-up of any new information that comes to its knowledge and is assessed by it to warrant further investigation, and to destroy, remove or render harmless any proscribed items that may be discovered through such investigations.